TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 57.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA, PLAINTIFF IN ERROR,

vs.

SARAH McDONOUGH AND JOHN HERRITY, ADMINISTRATOR OF THE ESTATE OF WINNIFRED HERRITY, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED JUNE 23, 1905.

(19,814.)

(19,814.)

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SARAH McDONOUGH AND JOHN HERRITY, ADMINISTRATOR OF THE ESTATE OF WINNIFRED HERRITY, DECEASED.

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INDEX.

	Original.	Print.
Caption	1	1
Transcript from superior court of Marion county	2	1
Complaint	3	1
Order assigning cause for trial	9	4
Rule to answer	9	5
Order filing demurrer	9	5
Demurrer to complaint	10	5
Order overruling demurrer	11	5
Order filing answer	11	5
Answer	11	6
Rule to reply	13	6
Order filing reply	13	7
Reply	13	7
Order filing affidavit for change of venue	14	7

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 7, 1906.

	Original.	Print.
Affidavit for change of venue	14	7
Order sustaining motion for change of venue	15	8
Order publishing depositions	15	8
Order beginning hearing	15	8
Order taking cause under advisement	15	8
Judgment	16	8
Order filing motion for new trial	16	9
Motion for new trial	16½	9
Order overruling motion for new trial, &c	17	9
Order allowing appeal	17	10
Order filing appeal bond, &c	17	10
Bond on appeal	18	10
Bill of exceptions	19	11
Plaintiff's offer of transcript of judgment	24	13
Objections by defendant	24	13
Ruling of the court	28	15
Exhibit No. 1—Transcript of record from the court of common pleas for the county of Susquehanna, Pennsylvania, in case of Sarah McDonough *et al. vs.* The Old Wayne Mutual Life Association	28	15
Docket entries	28	15
Præcipe for summons	29	16
Summons	30	16
Plaintiff's statement	31	17
Præcipe for alias summons	39	22
Alias summons	40	22
Declaration	41	23
Notice of filing declaration	50	28
Præcipe for judgment	51	29
Judgment	52	29
Clerk's certificate	52	29
Judge's certificate	53	29
Clerk's certificate	53	30
Plaintiff's offer of laws of Pennsylvania	55	30
Objections by defendant	55	30
Act amending an act entitled "An act to establish an insurance department," approved April 4, 1873	57	32
Defendant's motion to strike out foregoing act	60	33
Defendant's motion to strike out transcript	61	34
Both sides rest	65	36
Reporter's certificate	66	36
Judge's certificate	67	37
Motion for new trial overruled	68	37
Judge's certificate to bill of exceptions	68	37
Præcipe for transcript on appeal	69	38
Clerk's certificate	70	38
Assignment of errors	71	38
Order submitting cause	72	39
Order filing briefs for appellant	72	39
Order filing petition of appellee for leave to file brief	72	39
Order filing appellee's brief	72	39
Order filing suggestions for oral argument	72	39

	Original.	Print.
Order filing opinion and judgment	73	39
Opinion	74	40
Judgment	82	45
Order filing writ of error	83	46
Writ of error	84	46
Order filing citation	86	47
Citation	87	47
Affidavit of service of citation	88	47
Order filing bond	89	48
Bond on writ of error	90	48
Clerk's certificate	94	51

1 THE STATE OF INDIANA, *in the Supreme Court, ss:*

Be it remembered, that heretofore, to-wit: On May 18, 1903, the same being the 151st Judicial Day of the November Term 1902 of said Court, The Old Wayne Mutual Life Association of Indianapolis, Indiana, by its attorneys, William A. Ketcham and Charles E. Averill, filed in the office of the Clerk of the Supreme Court of Indiana, a transcript of the record and proceedings of the Marion Superior Court of said State, in a cause wherein Sarah E. McDonough and John Herrity, Administrator of the Estate of Winifred Herrity, deceased, were plaintiffs, and the said Old Wayne Mutual Life Association of Indianapolis, Indiana, was defendant, together with an Assignment of Errors endorsed thereon, which transcript was a term-time appeal, and which transcript and Assignment of Errors is in the words and figures following, to-wit:

2 Be it remembered, That among the records of proceedings had, papers filed, motions decided, rulings made, exceptions noted, judgments rendered, decrees entered etc., in the Superior Court of the County of Marion, State of Indiana, are the following in the cause of

No. 62233.

SARAH MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winnifred Herrity, Deceased,

vs.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

Be it further remembered, That heretofore, to-wit: on the 1st day of June, 1901, the above named plaintiffs by Guilford A. Deitch, their attorney, filed in the office of the Clerk of the Marion Superior Court a complaint against the said defendants in the words and figures following:

3 STATE OF INDIANA, *County of Marion, ss:*

In the Marion County Superior Court.

SARAH MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winnifred Herrity, Deceased,

vs.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

The plaintiffs, Sarah McDonough, and John Herrity, Administrator of the Estate of Winifred Herrity, Deceased, complain of the defendant, Old Wayne Mutual Life Association, of Indianapolis, Indiana, and say:

That the said defendant is a corporation organized and existing under and by virtue of the laws of the State of Indiana for the purpose of and now is transacting the business of life insurance.

That said defendant is now and was on the 3rd day of December, 1897, and long prior and subsequent thereto, engaged in the transaction of its said business in the State of Pennsylvania, soliciting applications for insurance from and issuing policies to residents of said State.

That it is provided in and by the laws of the State of Pennsylvania, as follows, towit:

An Act Amending an Act Entitled "An Act to Establish an Insurance Department," Approved the Fourth Day of April, Anno Domini One Thousand Eight Hundred and Seventy-three.

SECTION 1. Be it enacted, &c., That section thirteen of said act which reads as follows; namely, No insurance Company, not
4 of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State so designated, such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this State continues such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with service at the office of said company within this State, and that such service of process according to this stipulation, shall be sufficient service on the company. The term process includes any writ of summons, subpœna, or order, whereby any suit or proceeding shall be commenced, or which shall be issued in or upon any action, suit or proceedings brought in any court of this Commonwealth, having jurisdiction of the subject matter," be and the same is hereby amended as follows: "No insurance company, not of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the Insurance Commissioner, or the party designated by him, or the agent specified by the Company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if
5 such company should cease to maintain such agent in this State so designated, such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this State continues, such stipulation can not be revoked or modified, except that a new one may be substituted, so as to require or dispense with the service at the office

of the said company within this State, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term process shall be construed to mean and include any and every writ, rule, order, notice, or decree, including, any process of execution that may issue in or upon any action, suit, or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any court of this Commonwealth having jurisdiction of the subject matter in controversy, and all writs, rules, orders, notices, or decrees aforesaid, shall be directed to the sheriff, constable, or other officer authorized by law to serve similar writs, of the county wherein the same shall be issued, who is hereby authorized to serve the same on any and every person or persons, body politic or corporate, named in said process with said company, either as plaintiff, defendant or otherwise, or who may be impleaded in said action, suit or proceeding with said company found in said county, and either before or after the service on the person or persons body politic or corporate found in said county aforesaid as may be directed by the plaintiff or person issuing said process or his attorney; and in the absence of such direction, as shall be most convenient, the officer to whom said process may be directed, shall, by writing endorsed on, or attached to said process deputize the sheriff, constable, or other officer of the county where the state agent
6 designated by any company as provided by law to receive service of process for said company may reside to serve the same on him; and in default of an agent appointed by the company as aforesaid then the officer so charged with the service of said process shall, in like manner, deputize the sheriff, constable or other officer aforesaid of the county where the agent, if any there be, named by the insurance commissioner, may reside, to serve the same on him; and in default of such agent named by such insurance commissioner as aforesaid, then in like manner to deputize the sheriff, constable or other officer as aforesaid of the county where office of the insurance commissioner may be located to serve the same upon him; and each and every service so made shall have the same force and effect, to all intents and purposes as personal service on said company in the county where said process issued; and the fees of the officers serving said process shall be the same as are allowed by law for services in similar cases with mileage allowed by law in such cases, the distance being computed from the residence of the officer serving or executing the same and no further and all necessary postage paid by either of said officers shall be charged for as costs in the case.

The plaintiffs say that said law was approved the 20th day of June, A. D. 1883, and has ever since said date to the present time remained in full force and effect.

Plaintiffs say that upon the 3rd day of December, 1897, the defendant issued to one Patrick McNally, of Scranton, Pennsylvania, in pursuance of an application made therefor in the State of Pennsylvania, its policy of life insurance, wherein and whereby it promised to pay to the plaintiff, Sarah McDonough and Winnifred Herrity,

the said plaintiff, John Herrity's decedent, the sum of five
7 thousand dollars within ninety days after satisfactory proof of the death of said Patrick McNally, provided that if the death of said McNally occurred within one year from said date of said certificate, the beneficiaries should receive not more than one-fourth of said sum.

The plaintiffs say that the said Patrick McNally died on the 26th day of November, 1898; that the plaintiffs made proof of said death to the defendant and demanded payment of the sum due under said policy; that the defendant denied all liability to plaintiffs under said policy and refused to pay said sum of $1250 due thereon or any part thereof.

The plaintiffs say that upon the 5th day of July, 1900, suit was filed in the Common Pleas Court in and for the County of Susquehanna in the Commonwealth of Pennsylvania to enforce payment of the said sum of $1250 due under said policy; that service of process in said suit was served as in said act of Pennsylvania provided, to-wit: upon Israel W. Durham, Insurance Commissioner for the Commonwealth of Pennsylvania, the said defendant having no other agent or attorney upon whom process could be served in said state of Pennsylvania.

The plaintiffs say that upon the 16th day of April, 1901, the plaintiffs recovered a judgment in the said Court of Common Pleas in and for the said County of Susquehanna in the said Commonwealth of Pennsylvania, which said court is a court of general jurisdiction, against the defendant herein in said suit for the sum of $1250, together with interest thereon from November 14, 1898, at the rate of six per centum per annum, together with costs amounting to $14.50, which said judgment, interest and costs are wholly due and unpaid; and that there is now due to the plaintiffs from defendant on said judgment for principal, interest and costs, the sum of $1500.

8 Wherefore, plaintiffs demand judgment against the defendant for the sum of $1500 together with the costs of this action and all other proper relief.

GUILFORD A. DEITCH,
Attorney for Plaintiffs.

9 And afterwards, towit: on the 1st day of June, 1901, being the 24th judicial day of the General term of the said Marion Superior Court for the month aforesaid, before the Hon. John L. McMaster, James M. Leathers and Vinson Carter, Judges thereof, the following proceedings were had herein:

"Ordered, That cause numbered 62,233 be assigned to Room Two (2) for trial."

And afterwards, towit: on the 21st day of June, 1901, being the 17th judicial day of the Special term of the said Marion Superior Court for the month aforesaid, before the Hon. James M. Leathers, Judge presiding in said Room Two (2), the following proceeding was had herein, viz:

"Comes the plaintiff by counsel and on motion the Court rules the defendant to answer the complaint herein, June 25th, 1901.

And afterwards, to-wit: on the 1st day of October, 1901, being the 26th judicial day of the said Court for the month aforesaid, before the same Hon. Jun*de*, the following proceeding was had herein, viz:

"Comes the defendant by counsel and files its demurrer to the complaint herein, as follows, viz:

10 STATE OF INDIANA, *Marion County, ss:*

In the Superior Court.

No. 62233. R. 2.

September Term, 1901.

SARAH MCDONOUGH ET AL.
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION.

Demurrer to Complaint.

The defendant demurs to the plaintiff's complaint and for cause of demurrer says, that said complaint does not state facts sufficient to constitute a cause of action.

C. E. AVERILL,
Attorney for Defendant.

11 And afterwards, towit: on the 18th day of October, 1901, being the 11th judicial day of the said October term of this Court, before the same Hon. Judge, the following proceedings were had herein:

"Come the parties by counsel, and the Court now overrules the defendant's demurrer to the complaint herein, to which ruling the defendant at the time, excepts, and is ordered to answer over, October 22nd, 1901."

And afterwards, towit: on the 1st day of November, 1901, being the 23rd judicial day of the October term of this court, before the same Hon. Judge, the following proceedings were had herein, viz:

"Comes the defendant by counsel and files its answer to the complaint in this cause, as follows, viz:

STATE OF INDIANA, *Marion County, ss:*

In the Superior Court, Room 2, October Term, 1901.

No. 62233.

SARAH MCDONOUGH ET AL.
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

Answers.

Par. 1. The defendant for a first paragraph of answer to the plaintiff's complaint says, it denies each and every material allegation in said complaint contained.

Par. 2. For a second and further paragraph of answer to
12 the plaintiff's complaint the defendant says, that — is a domestic corporation organized under and by virtue of the laws of the State of Indiana, and not otherwise. That its only offices for the transaction of business are, and at all times have been, situate in the City of Indianapolis, in the State of Indiana, in which said city all of its officers reside and have at all times resided; that it has never at any time been admitted to do business in the State of Pennsylvania, nor has it at any time had any office or agency whatsoever in the said State of Pennsylvania for the transaction of business; that no officer or agent of defendant, or any other person acting for or representing defendant in any capacity, was in the State of Pennsylvania at the time of the commencement of the suit in which the plaintiffs allege they recovered a judgment against defendant in the Common Pleas Court of Susquehanna, in the State of Pennsylvania, nor has any officer, agent or other representative of this defendant ever at any time been within the limits of said State of Pennsylvania since the time of the alleged commencement of said suit until the present time; that no summons was ever served upon this defendant at any time or place, or in any manner.

Defendant further avers that it did not appear in said action, nor did any other person having any authority whatsoever so to do, appear for it or in its behalf therein; and that the first notice, knowledge or information which this defendant ever had of the recovery of such pretended judgment, was long after the time when it is claimed by plaintiffs that the same was thus recovered.

Wherefore defendant demands judgment.

C. E. AVERILL,
Attorney for Defendant.

13 "And the Court rules the plaintiffs' reply to said answer November 5th, 1901."

And afterwards, towit: on the 5th day of November, 1901, being the 2nd judicial day of the said November term of this court, before the same Hon. Judge, the following proceeding was haid herein, viz:

"Comes the plaintiffs by counsel and files the following reply to the defendant's answer herein":

STATE OF INDIANA, *County of Marion, ss:*

In the Marion Superior Court.

Room 2. Cause No. 62233.

November Term, 1901.

SARAH MCDONOUGH ET AL.
vs.
OLD WAYNE MUTUAL LIFE ASSOCIATION.

The plaintiffs in the above entitled cause, for reply to defendant's second paragraph of answer herein, deny each and every material allegation in said paragraph of answer contained.

GUILFORD A. DEITCH,
Attorney for Plaintiff-.

14 And afterwards, towit: on the 29th day of November, 1901, being the 23rd judicial day of the said November term of this court, before the same Hon. Judge, the following proceedings were had herein, viz:

"Comes the defendant by counsel and files its affidavit for a change of venue from the present Judge of this Court, as follows:

STATE OF INDIANA, *Marion County, ss:*

In the Superior Court, Room 2.

November Term, 1901.

No. 62233.

SARAH MCDONOUGH ET AL.
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION.

Affidavit for Change of Judge.

STATE OF INDIANA, *Marion County, ss:*

Charles C. Gilmore being first duly sworn, on his oath says:

That he is the Secretary of the Old Wayne Mutual Life Association, defendant in the above entitled cause, and makes this affidavit

for and on behalf of said defendant; that on account of the bias of the Honorable James M. Leathers before whom this action is pending, said defendant cannot have a fair and impartial trial.

CHARLES C. GILMORE.

Subscribed and sworn to before me this 27th day of November, 1901.

CHARLES ALCON,
Notary Public.

My Commission expires Jan. 3rd, 1902.

15 "And the Court now sustains said affidavit and sends the cause to the General Term hereof for re-assignment."

And afterwards, towit: on the 11th day of January, 1902, being the 6th judicial days of the said January term of this Court, before the Hon. Vinson Carter, Judge presiding in Room Three (3) hereof, the following proceeding was had herein:

"On the motion of plaintiff the depositions of Anthony J. Mahon *et al.* are now published."

And afterwards, towit: on the 27th day of October, 1902, being the 19th judicial day of the October term of this Court, before the same Hon. Judge, the following proceedings were had herein:

"Come the parties in person and by counsel and this cause is now submitted to the Court for trial, finding and judgment.

And the evidence adduced having been heard in part the further consideration of this cause is continued until tomorrow."

And afterwards, towit: on the 28th day of October, 1902, being the 20th judicial day of the said October term of this Court, before the same Hon. Judge, the following proceedings were had herein:

"Come again the parties as aforesaid, and the trial of this cause being resumed, additional evidence is heard and the evidence is concluded. And the argument of counsel having been heard, the Court now takes this cause under advisement."

16 And afterwards, towit: on the 7th day of January, 1903, being the 3rd judicial day of the said January term of this Court, before the same Hon. Judge, the following proceedings were had herein, viz:

"Come again the parties as aforesaid, and the Court being fully advised finds for the plaintiffs, that they are fully entitled to recover of the defendant the sum of $1561.45, collectible with relief from valuation and appraisement laws.

It is therefore considered and adjudged by the Court that Sarah McDonough and John Herrity, the administrator of the estate of Winnifred Herrity, deceased, recover of the defendant, Old Wayne Mutual Association of Indianapolis, Indiana, the sum of Fifteen Hundred and Sixty-one and 45/100 dollars, collectible with relief from valuation and appraisement laws together with the costs herein at $——."

Ar afterwards, towit: on the 17th day of January, 1903, being the 12th judicial day of the said January term of this Court before the same Hon. Judge, the following proceeding was had herein, viz:

"Comes the defendant by counsel and files its motion for a new trial of this cause as follows":

16½ No. 62233. Room 3.

SARAH MCDONOUGH ET AL.
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION.

Motion by Defendant for New Trial.

The defendant moves the court to set aside the judgment herein and to grant it a new trial, and on support of said motion assigns the following reasons, towit:

1. That the decision is not sustained by suffic-*net* evidence.
2. That the decision is contrary to law.
3. That there was an error in the assessment of the amount of recovery, the same being assessed at too large a sum and the action being upon a contract.
4. That there was error of law occurring at the trial and excepted to at the time by this defendant in this

a: The Court erred in admitting in evidence the transcript of the judgment sued upon.

b: The Court erred in admitting in evidence the laws of Pennsylvania entitled "An act amending an act entitled: "An Act to establish an insurance department," approved the 4th day of April Anno Domini, one thousand eight hundred and seventy-three.

(Session Laws of 1883 of the laws of Pennsylvania page 134.)

c: The Court erred in overruling the motion of the defendant to strike out the above named statute.

d: The court erred in overruling the motion of the defendant to strike out and withdraw from the record the transcript of the judgment offered in evidence.

17 *e:* The Court erred in and by its ruling and upon the trial and its judgment in that thereby the defendant was deprived of its property without due process of law, contrary to the provisions of the first section of the Fourteenth Amendment to the Constitution of the United States.

CHARLES E. AVERILL AND
WILLIAM A. KETCHAM,
Attorneys for Defendant.

And afterwards, to wit: on the 7th day of March, 1903, being the 6th judicial day of the said March term of this Court, before the same Hon. Judge, the following proceedings were had herein:

"Come the parties by counsel and the Court being fully advised, overrules the defendant's motion for a new trial herein, to which ruling the defendant excepts, and sixty (60) days' time is allowed

in which to file the evidence, and sixty (60) days' time is allowed in which to file a bill of exceptions."

And afterwards, to-wit: on the 21st day of March, 1903, being the 18th judicial day of the said March term of this Court, before the same Hon. Judge, the following proceedings were had herein:

"Comes the defendant by counsel and prays an appeal of this cause to the Supreme Court of Indiana, which is granted upon the defendant filing an Appeal Bond in the sum of $2500.00 with surety to the appeal of the Court within ten (10) days from the date.

And the defendant now files a long hand transcript of the evidence herein.

And the defendant now files an Appeal Bond herein in the sum of $2500.00 which Bond is approved by the Court and is as follows:"

18 *Appeal Bond.*

Supreme Court. No. 11. 4-18-'95.

Know all men by these presents, That we The Old Wayne Mutual Life Association of Indianapolis, Indiana, principal, and Charles C. Gilmore, as surety are held and firmly bound unto Sarah McDonough and John Herrity Administrators of Estate of Winnifred Herrity, deceased, in the penal sum of Two Thousand Five Hundred Dollars, to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 21st day of March 1903.

The condition of the above obligation is such, that whereas, heretofore, to-wit: On the 7th day of January 1903. the said Sarah McDonough and John Herrity, Administrators, etc. in the Marion Superior Court, recovered a judgment against the said Old Wayne Mutual Life Association for the sum of Fifteen Hundred Sixty-one and 45/100 Dollars, in damages and cost of suit, etc., from which said judgment of said Marion Superior Court, the said Old Wayne Mutual Life Association appeal- to the Supreme Court of Indiana.

Now if the said Old Wayne Mutual Life Association shall and will duly prosecute said appeal, and abide by and pay the judgment and costs, which may be rendered or affirmed against it then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

OLD WAYNE MUTUAL LIFE ASSOCIATION, [SEAL.]
By L. C. STEWART, *Pres.* [SEAL.]
CHARLES C. GILMORE. [SEAL.]

Attest: C. C. GILMORE, *Sec'y.*

Approved this 21 day of March, 1903.

VINSON CARTER, *Judge.*

19 *Stenographers' Transcript.*

STATE OF INDIANA, *County of Marian, ss:*

In the Superior Court, Room 3, October Term, A. D. 1902.

Hon. Vinson Carter, Judge.

No. 62233.

SARAH MCDONOUGH

vs.

OLD WAYNE MUTUAL LIFE ASSOCIATION.

Stenographers' Transcript of the Evidence.

Appearances.

For plaintiff, G. A. Deitch.
For defendant, W. A. Ketcham and Charles E. Averill.

Chas. D. Johnson. A. C. Metcalf.

Johnson & Metcalf Official Stenographers, Room 81 Court House.

Telephone No. 398.

Indianapolis, Indiana.

Filed Mar. 21, 1903.

WM. E. DAVIS, *Clerk.*

20 STATE OF INDIANA, *County of Marion, ss:*

In the Superior Court, Room 3, In the October Term, A. D. 1902.

Before Hon. Vinson Carter, Judge.

No. 62233.

SARAH MCDONOUGH

vs.

OLD WAYNE MUTUAL LIFE ASSOCIATION.

Appearances.

For Plaintiff: G. A. Deitch.
For Defendant: W. A. Ketcham and Charles E. Averill.

Johnson & Metcalf, Official Stenographers, Room 51 Court House, Indianapolis, Indiana.

21 *Index.*

Transcript of Judgment .....
Laws of Pennsylvania .....
Certificate of Reporter .....
Certificate of Judge .....
Certificate of Clerk .....

22 STATE OF INDIANA, *County of Marion, ss:*

Filed May 5, 1903. Wm. E. Davis, Clerk.

In the Superior Court, Room No. 3, in the October Term, A. D. 1902.

Before Hon. Vinson Carter, Judge.

No. 62233.

SARAH McDONOUGH
vs.
OLD WAYNE MUTUAL LIFE ASSOCIATION.

Stenographer's Transcript of the Evidence.

Defendant's Bill of Exceptions.

Be it remembered, That on the 27 day of October, 1902, the same being the 19th judicial day of the October Term, 1902, of the Superior Court of Marion County, State of Indiana, the following proceedings were had in the above entitled cause, before the Honorable Vinson Carter, Judge of said Court, presiding in Room No. 3, to-wit:

The cause being at issue, the same came on for trial before the Court, G. A. Deitch, appearing as counsel for the plaintiff, and W. A. Ketcham and Charles E. Averill, appearing as counsel for the defendant.

And be it further remembered, that before the trial was begun, for the purpose of facilitating and expediting the trial of said cause, said Judge, on his own motion and at the request of the parties, required to be present Charles D. Johnson, official reporter of said Court, to take down in shorthand the oral evidence, including both questions and answers, and note all the rulings of the Judge in respect to the admission and rejection of evidence, and the objections and exceptions thereto, and the documentary evidence on the
23 trial of said cause; and the said Charles D. Johnson was duly sworn to faithfully perform his duties as such reporter in said cause.

And be it further remembered, that said official reporter was present and took down in shorthand the oral and documentary evidence given upon the trial of said cause, including both questions and answers, and noted all of the objections made to the admission of evidence, and all of the rulings of the Court with respect to the admission and rejection of evidence, and the exceptions taken thereto.

And the defendant having requested said reporter to furnish it with a complete transcript of said evidence, objections, rulings of the Court thereon, and the exceptions taken thereto, including all documentary evidence, a typewritten transcript of the same was made by said reporter and filed with the Clerk of the Superior

Court of Marion County, State of Indiana, on the 21st day of March, 1903; which tpyewritten transcript is in the words and figures following: That is to say:

24 The plaintiff, to maintain the issues on her behalf, offered and introduced the following evidence, to-wit:

Mr. DEITCH: The plaintiff offers in evidence the transcript of the judgment in this case.

Mr. KETCHAM: The defendant objects to the admission of this paper, which is by courtesy called a "transcript" for the reasons:

First. That it is incomplete and illegal, in that

(*a*) The Act of Pennsylvania under which the alleged process was served, provides privileges and immunities to citizens of the United States; in that it attempts to deprive the defendant of its property without affording it any opportunity to defend its rights thereunder, contrary to the first section of the Fourteenth Amendment to the Constitution of the United States.

(*b*) The Act of Pennsylvania under which the so-called process was served upon the Insurance Commissioner of Pennsylvania attempts to deprive this defendant of its property without due process of law, contrary to the first section of the Fourteenth Amendment of the Constitution of the United States.

(*c*) The Act of Pennsylvania under which the so-called process denies to this defendant equal protection of the laws contrary to the first section of the Fourteenth Amendment of the Constitution of the United States.

(*d*) That the alleged judgment sued upon is contrary to the last clause of the Sixteenth section of Article 1 of the Constitution of Indiana, in that the penalty provided in the Act of Pennsylvania against foreign corporations attempting to do business in

25 Pennsylvania, without having complied with its laws, is not proportionate to the nature of the offense.

(*e*) That the alleged judgment offered in evidence and the Act of Pennsylvania under which it was rendered, seeks to take the property of this defendant without just compensation contrary to Section 21 of Article 1 of the Constitution of Indiana.

(*f*) That the alleged judgment offered in evidence denies to this defendant any remedy for injury done to its property by due course of law contrary to the provisions of Section 12 of Article 1 of the Constitution of Indiana.

Second. For the reason that the alleged transcript is not certified according to law; that the certificate to the transcript is by H. F. Manzer, prothonotary of the Court of Common Pleas, and it is certified to by D. W. Searle, who is alleged to be president judge of some place in Pennsylvania, and that his certificate is certified to by H. F. Manzer, prothonotary. That there is no person known to the law as H. F. Manzer or D. W. Searle; a man in this country has to have a name and to authenticate a writing by the name of Carter would constitute no justification to a sheriff for attempting to serve a process or take property or for V. Carter to do so would constitute no warrant of law as the Supreme Court of this State has recently held and as it has always been known to be the law.

Third. That there does not appear from this so-called transcript to have been any judgment entered; there is no judgment set out in the transcript as I have seen but there is a foot note memorandum—I do not know what you may call it—it is not anything known in law—something cut out from an index but not a judgment.

Fourth. That there never was any complaint or declara-
26 tion filed in the Court of Common Pleas for the Commonwealth of Pennsylvania.

Fifth. That the alleged service by the so-called sheriff in Susquehanna County is void and of no effect for the reason that it purports to have been done by the sheriff of a county beyond the limits of the County of Susquehanna.

Sixth. That it affirmatively appears upon the face of the papers filed, that the contract sued upon in Pennsylvania was not a contract executed in Pennsylvania but was a contract executed in the State of Indiana, and in that connection I will call your Honor's attention to a statement on that point in the pleading over the signature of Miller S. Allen, attorney for plaintiff, after setting out the contract of insurance, as follows: "The above contract of insurance is governed by the laws of the State of Indiana, the contract having been entered into at Indianapolis, Indiana."

Seventh. That there was no præcipe for the alias summons to the prothonotary, the alleged præcipe being as follows: "To H. F. Manzer, Prothonotary" there being no such person as H. F. Manzer, and it being impossible to ascertain from the recitals of the alleged præcipe anywhere who either H. F. Manzer or D. W. Searle was; the summons is under the attest of the Honorable D. W. Searle and is attested by H. F. Manzer, prothonotary. There is no averment in the so-called transcript that any person under the law, occupying a judicial position or any presiding judge of the Common Pleas Court of Susquehanna County, had executed this writ under the name of D. W. Searle. There is no averment that any person who might be a prothonotary had attested the summons under the name of H. F. Manzer, and this Court has to accept the statement of the transcript as it comes: that is, it is a transcript by H. F.
27 Manzer, attested by D. W. Searle. The alias summons found in the transfer is signed by H. F. Manzer and it professes to be under the attest of D. W. Searle, president of the Court of Common Pleas. A copy of the return is as follows:

"Served The Old Wayne Mutual Life Association of Indianapolis, Indiana, an insurance company incorporated under the laws of the State of Indiana, by giving September 26th, 1900, a true and attested copy of the within writ to Israel W. Durham, Insurance Commissioner for the State of Pennsylvania, and making known to him the contents thereof, the said Association having no attorney in the State of Pennsylvania upon whom service could be made.

So answers.

WENCEL HARTMAN, *Sheriff.*"

Attached to this is

"I hereby authorize and depute Wencel Hartman, Sheriff of Philadelphia County, to serve the within writ according to law on the Insurance Commissioner of Pennsylvania and make return of the same.

W. J. MAXEY, *Sheriff.*

September 24–1900."

for the reason that it appears never to have been returned by any sheriff or any officer authorized to act as sheriff, the return being made by one W. J. Maxey, whom the law cannot know as an officer.

Eighth. That the affidavit made by Mr. Hummel, deputy sheriff, of his doings is not verified but purports only to have been verified before one J. G. Diffenderfern prothonotary.

28 The hour of five o'clock having arrived, the Court adjourned until tomorrow, Tuesday, October 28th, 1902, at nine o'clock A. M.

TUESDAY, *October* 28, 1902—9 o'clock a. m.

The Court met pursuant to adjournment and the trial of the above entitled cause was resumed as follows:

The COURT: I will allow the transcript to be admitted in evidence.

To which ruling of the Court the defendant, by counsel, at the time, excepted.

The said transcript, so offered was admitted in evidence, marked Exhibit No. 1 and read to the Court, a copy of which is in the words and figures following, to-wit:

"EXHIBIT No. 1."

Among the records and proceedings enrolled in the Court of Common Pleas in and for the County of Susquehanna in the Commonwealth of Pennsylvania, to No. 244, August Term, 1900, is contained the following:

Copy of Common Pleas Docket Entry.

SARAH MCDONOUGH and JOHN HERRITY, Adm'r of the Estate of Winifred Herrity, Deceased,

vs.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

July 5, 1900, Issued Summons in Assumpsit; Returnable first Monday of August 1900: Same day filed Plaintiff's Statement. Summons returned Nihil Habet. Sept. 24, 1900, filed praec. and issued Alias Summons; returnable in Nov. Term 1900. Returned served by Shff. of Phila. Co. on Defendant Sept. 26, 1900, by service on Israel W. Durham, Insurance Commissioner of the State of Pennsylvania. February 22, 1901, filed Plaintiff's Declaration,—same day filed copy of policy. March 4, 1901, filed proof of notice to Israel W. Durham, on the 27th day of February, 1901.

29 *Costs.*

Atty. Pd.	$2.00
Shff. M.	1.00
Shff. M.	3.00
Shff. Dau. Co.	1.75
Prot. M.	3.75
Atty.	3.00
	$14.50

Recd. Dec. 1,00 of C. S. Woodruff my costs. $4.00.

W. J. MAXEY, *Sheriff.*
L.

Now April 16, 1901, on motion of Miller S. Allen, the Court directs judgment for want of an appearance.

By the Court.

Whereupon judgment is entered against Defendant and in favor of Plaintiff for the sum of twelve hundred fifty dollars, with interest from November 14th, 1898.

Copy of Prwcipe.

In the Court of Common Pleas of Susquehanna County.

SARAH MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winifred Herrity, Deceased,

vs.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

Issue Summons in Assumpsit. Returnable to next monthly return day.

MILLER S. ALLEN,
Att'y for Pl'f.

H. F. MANZER, *Prot'y.*

July 4, 1900.

30 Copy of Filing. No. 244 August Term 1900. Sarah McDonough and John Herrity, Adm'rs of Winifred Herrity, Dec'd. *vs.* The Old Wayne Mutual Life Association of Indianapolis, Indiana. Filed July 5, 1900. Atty. Paid $2.00. Miller S. Allen.

THE COMMONWEALTH OF PENNSYLVANIA,
Susquehanna County, ss:

[SEAL.] To the Sheriff of Susquehanna County, Greeting:

We command you that you summon The Old Wayne Mutual Life Association of Indianapolis, Indiana,

So that it be and appear before our Court of Common Pleas, to be holden at Montrose, in and foe said County, on the First Monday of

August next, there to answer Sarah McDonough and John Herrity, Administrators of the estate of Winifred Herrity, deceased, in assumpsit, and have you then and there this writ.

Witness the Hon. D. W. Searle, President of our said Court, at Montrose, the 5th day of July A. D. 1900.

H. F. MANZER,
Prothonotary.

Copy of Summons.
To the Hon. the Judge, &c.
Nihil Habet as to the within named defendant.
31 So answers,

W. J. MAXEY, *Sheriff.*

(On the back:) No. 244 August Term, 1900. Sarah McDonough *et al.* Administrators *vs.* The Old Wayne Mutual Life Association of Indianapolis Indiana. Summons. Returnable 1st Monday Aug. 1900 Service $1.00 —— —— P. Q.

Copy of Plaintiffs' Statement.

In the Court of Common Pleas of Susquehanna County.

No. 244. August Term, 1900.

SARAH MCDONOUGH and JOHN HERRITY, Administrators of the Estate of Winifred Herrity, Deceased,
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

SUSQUEHANNA COUNTY, *ss:*

The Plaintiff-, Sarah McDonough and John Herrity, Admr. of the estate of Winifred Herrity, claim of the defendant, the Old Wayne Mutual Life Association of Indianapolis, Indiana, the sum of twelve hundred and fifty dollars ($1250.00) upon a certain policy
32 of Insurance dated the third day of December 1897 with interest thereon from the 14th day of November 1898, justly due and payable to the plaintiffs by the defendant of which claim the following is a statement.

The policy of insurance dated the third day of December 1897 number 01159 was executed and delivered by the defendant to the plaintiffs on the said third day of December A. D. 1897 at Scranton, Pa., in consideration of the sum of fifty dollars ($50.) paid on that day by the plaintiffs to the defendant. The following is a copy of the said policy:

No. 01159. $5000.00

Old Wayne Mutual Life Association of Indianapolis, Indiana.

Certificate of Membership.

Senior Class B.

Witnesseth, that the Old Wayne Mutual Life association of Indiana, in consideration of the representations made to them in the application for the certificate and the sum of fifty dollars to them duly paid, does hereby accept Patrick McNally of Scranton, state of Pennsylvania, as a member of Senior Class B, of the Old Wayne Mutual Life Association, subject to its articles of association and bylaws.

At the end of ninety days after satisfactory proof of the death of the above named member has been received and approved at the home office of this association, the said Old Wayne Mutual Life Association, aforesaid, hereby promise and agree to pay to Winifred Herrity and Sarah McDonough of Scranton, State of Pennsylvania or their legal representatives, the sum of five thousand dollars less any liens or indebtedness that may be due said association from this policy and upon the following express conditions upon which this certificate is issued and accepted by the above named member.

33 First. The above named member hereby agrees to forward to this association within thirty days after the issuance of each and every regular assessment that shall be made by this association, the amount of such assessment under this policy. And it is further agreed and accepted that if any such assessment is not paid within thirty days from the date thereof, then this certificate shall become null and void and of no effect, and all liability of this association to such delinquent member, and of his or her liability to this association shall cease, and all money paid on this certificate shall thereupon become forfeited to this association.

Second. If the death of the above named member shall occur within one year from the date of this certificate, the beneficiary shall not receive more than one-fourth of the highest sum named in this certificate. If said death occur after one year and within two years from the date of this certificate, the beneficiary shall not receive more than one-half of the highest amount named in this certificate.

If said death occur after two years and within three years, the beneficiary shall not receive more than three-fourths of the highest sum named in this certificate. If said death occur after three years, then the beneficiary shall be entitled to the highest sum named therein, subject to the agreements and conditions set forth above and on the back of this certificate, all of which are made a part of this agreement, as fully as though set forth in the body thereof.

In witness whereof, the said Old Wayne Mutual Life Association has hereunto affixed its corporate seal, and caused this certificate to be signed by its President and Secretary at Indianapolis, State of Indiana, on the third day of December, A. D. 1897.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION,
INDIANAPOLIS, INDIANA.

34 L. C. STEWART, *President.*

C. C. GILMORE, *Secretary.*

The following conditions and agreements referred to in the body of this certificate are also made and accepted as part and parcel of this contract.

First. That no misrepresentation- have been made; no untrue answers given to the questions contained in the application; no facts suppressed, and no fraud or deceptions used by the applicant, calculated to deceive or mislead the agents or officers of the association.

Second. A printed or written notice of assessments directed to each member as it appears on the books of the association, and deposited in the post office, shall be deemed sufficient notice. Due notice must be given to the association by each member of any change by him or her, of residence or post office address.

Third. When a certificate becomes a claim upon this association, notice of death should be immediately forwarded to the office and blank form for "Proof of death" will at once be forwarded to the beneficiary. In reckoning the payment of claims, all losses are dated from the time the proofs of death are received, approved and placed on file in the office of the association.

Fourth. Commencing January first of each year; each year shall be divided into six parts or divisions January and February constituting the first, March and April the second, May and June the third, July and August the fourth, September and October the fifth, November and December the sixth. All bi-monthly premiums or assessments on said policy, and on all other policies issued by said association under the plan of insurance under which this policy is issued, which shall be received by said association during any such part of division, shall constitute a fund for the following uses and purposes, namely: Twenty per cent. thereof may be used for the payment of expense of the association and salaries of officers; seventy per cent. thereof shall constitute a mortuary fund for such part or division; and ten per cent. shall be set aside as a reserve fund. The reserve fund shall not be used for any purpose, until it shall reach a sum in excess of ten thousand dollars, when such excess may, in the discretion of the board of directions, be used by order of the board of directors to make up any payments to policy holders for which the regular assessment may not be sufficient to provide.

Fifth. Any claim under this policy which shall be approved by said association in any such part or division of a year, shall be payable from the mortuary fund for the next part or division of a year. From the mortuary fund from which any claim under this policy shall become payable, any claim under any other policy issued by said association under said plan, the terms of which shall entitle such claims to payment from such fund, may be paid.

Sixth. It is further hereby expressly undertsood and agreed by and between the Old Wayne Mutual Life Association, and the insured and beneficiary or beneficiaries, or their heirs, administrators or assigns in this policy, that, in the event said association does not call or require the payment of an assessment under this policy in excess of the estimated rate of assessment for the age at which the insured, as shown in the table printed on back of this policy, when-

ever this policy shall become a claim by reason of the death of the insured, should the amount raised by like assessment upon
36 all members of the class to which this policy belongs, be insufficient to pay in cash the full amount of this policy and all other claims for which such assessment was made, then, and in that event, this policy's pro rata proportion of such deficiency shall be and constitute a lien upon this policy, and shall be charged against the same and be deducted from the face of this policy and accepted by all parties beneficiaries thereto as a valid indebtedness and charged against the same in favor of the association.

Seventh. The following are risks which are not included in this contract nor assumed by this association, and therefore the consideration thereof shall be deemed to have failed, and this contract and policy and all claims thereunder, shall be void and all payments made thereon shall be forfeited to said association, if the insured shall die by his own hand, or act, whether sane or insane, or at the hands of justice; or shall die in consequence of a duel or of violation or attempted violation of any criminal law of the United States or of the State, territory or country in which said insured may be; or in consequence of war, invasion or any voluntary exposure of unnecessary or hazardous adventure; or in consequence of being personally engaged in mining, blasting, wrecking, sub-marine operations, aeronautic ascensions, arctic exploration, railroad or steamboat service, as engineer, fireman, or brakeman, or in the production, use, custody or transportation of highly inflammable or explosive substances.

Eighth. This policy shall not take effect until the advanced premium or estimate thereon shall be paid to the association or its authorized agents, also one bi-monthly premium shall have been levied, become due, and been collected thereon, while the insured shall be in good health and during his life time, and shall be incontesti-
37 ble after one year from date of this issue, except for fraud, or misrepresentation in the application upon which the same was issued or breach of its conditions or of the covenants and agreements contained in such application. No alteration or discharge of this contract, waiver of any default in any condition thereof, or the grant of any permit or credit shall be valid and binding upon this association, unless the *shall* shall be in writing and signed by its president or secretary.

For all purposes and in all cases this contract shall be deemed to have been made at the principal office of this association in the State of Indiana, U. S. A., and all benefits and claims thereunder shall be payable at such office, and become due and payable within ninety days next after the acceptance by this association of proofs satisfactory to it by affidavits showing the death of the insured and such other facts as shall be required by the association, and made out in blank forms adopted and to be furnished by it for such purpose, and shall accrue, and be paid in conformity with the by-laws and the rules and regulations of this association and these conditions and provisions.

Ninth. It is further understood and agreed that all policies in

Class B, to which this policy belongs shall be a separate and distinct class, and shall not share or be entitled to share in any fund belonging to any other class or division of this association, and shall not be liable for any losses or claims accruing in any other class or division of this association.

Limitation of Action.

Tenth. It is expressly understood and agreed that no action shall be maintained, nor recovery had for any claims under or by
38 virtue of this policy, after the lapse of six months from the death of said member.

The plaintiffs aver that they have always from the time of the making of the policy of insurance, performed all things on their part to be fulfilled according to the tenor and effect of that instrument; and that the said Patrick McNally, the member aforesaid, prior to his death, also performed all things, to be preformed by him during his lifetime according to the tenor and effect of said contract; and that the said Patrick McNally, the party insured for the benefit of the said Winifred Herrity and Sarah McDonough, died on the 14th day of November A. D. 1898 within one year after the date of the certificate aforesaid; that said death occurred at Scranton, in the State of Pennsylvania while the said policy was in force; that said plaintiffs furnished the said defendant with good and sufficient proof of death of the said Patrick McNally on the 26th day of November A. D. 1898, and that the said Patrick McNally in his lifetime, in all things performed the conditions and covenants stipulated in said instrument as hereinbefore set forth; yet, not withstanding the covenant of the said defendant and the death of the said Patrick McNally, and due proof thereof furnished to the Company, the said defendant has not performed its covenants in this, that, although so requested, it did not at the end of ninety days after such proof had been furnished of the death of the said Patrick McNally, in accordance with the terms and conditions in the said certificate, or policy of insurance, or at any time, pay to the said plaintiffs the said sum of twelve hundred and fifty dollars ($1250.00) or any part thereof, but has utterly failed so to do.

Plaintiffs therefore claim from the defendant the sum of twelve hundred and fifty dollars ($1250.00) with interest from the 14th day of November A. D. 1898.

39 Montrose, Pa., June 21st 1900.

MILLER S. ALLEN,
Att'y for Plaintiffs.

The above contract of insurance is governed by the laws of the State of Indiana, the contract having been entered into at Indianapolis, Indiana.

MILLER S. ALLEN,
Att'y for Plaintiffs.

Copy of Backing: 244 August Term 1900 Sarah McDonough and John Herrity, Administrator- of the estate of Winifred Herrity, De-

ceased, *vs.* The Old Wayne Mutual Life Association of Indianapolis Indiana. Filed July 5th 1900. Copy of Præcipe for Alias summons.

In the Court of Common Pleas of Susquehanna County.

No. 244. August Term, 1900.

SARAH MCDONOUGH, JOHN HERRITY, Admr's of Winifred Herrity.
vs.
THE OLD WAYNE MUTUAL LIFE ASS'N OF INDIANAPOLIS, IND.

To H. F. Manzer, Prothonotary.

40 Issue Alias summons in the above entit-ed case; returnable to November Term 1900.

MILLER S. ALLEN,
Attorney for Plaintiffs.

September 24, 1900.

Copy of Filing: No. 244 August Term 1900. Sarah McDonough, John Herrity, Admr's of Winifred Herrity, *vs.* The Old Wayne Mutual Life Ass'n of Indianapolis, Ind. Præcipe for Alias Summons. Filed September 24, 1900.

THE COMMONWEALTH OF PENNSYLVANIA,
Susquehanna County, ss:

[SEAL.] To the Sheriff of Susquehanna County, Greeting:

We command you that you summon The Old Wayne Mutual Life Association of Indianapolis, Indiana, So that it be and appear before our Court of Common Pleas, to be holden at Montrose, in and for said County, on the second Monday of November next, there to answer Sarah McDonough and John Herrity Adm'rs of the estate of Winifred Herrity, Dec'd in Assumpsit, and have you then and there this writ.

Witness the Hon. D. W. Searle, President of our said Court, at Montrose, the 24th day of September A. D. 190–.

H. F. MANZER, *Prothonotary.*

Copy of Alias Summons.

Copy of Return.

41 Served the Old Wayne Mutual Life Association of Indianapolis, Indiana, an Insurance Company Incorporated under the laws of the State of Indiana, by giving September 26, 1900, a true and attested copy of the within writ to Israel W. Durham Insurance Commissioner for the State of Pennsylvania, and making known to him the contents thereof, the said Association having no Attorney in the State of Pennsylvania upon whom service could be made.

So answers,

WENCEL HARTMAN, *Sheriff.*

I hereby authorize and depute Wencel Hartman Sheriff of Philadelphia County to serve the within writ according to law on the Insurance Commissioner of Pennsylvania, and make return of same.
September 24, 1900.

W. J. MAXEY, *Sheriff.*

(On back is the following:) No. 244 August Term, 1900. Sarah McDonough and John Herrity Adm'r- of Winifred Herrity, deceased, *vs.* The Old Wayne Mutual Life Association of Indianapolis Indiana. Summons. Returnable 2nd Monday Nov. 1900 Miller S. Allen, P. Q.

Copy of Declaration.

No. 01159. Old Wayne Mutual Life Association of Indianapolis, Indiana. Certificate of membership, Senior Class B.

Witnesseth, that the Old Wayne Mutual Life Association
42 of Indiana, in consideration of the representations made to them in the application for this certificate and the sum of fifty dollars to them duly paid, does hereby accept Patrick McNally of Scranton, State of Pennsylvania as a member of senior Class B., of the Old Wayne Mutual Life Association, subject to its articles of association and by-laws.

At the end of ninety days after satisfactory proof of the death of the above named member has been received and approved at the home office of this association, the said Old Wayne Mutual Life Association, aforesaid hereby promise and agree to pay to Winifred Herrity and Sarah McDonough of Scranton, State of Pennsylvania, or their legal representatives, the sum of five thousand dollars less any liens or indebtedness that may be due said association from this policy and upon the following express conditions upon which this certificate is issued and accepted by the above named member.

First. The above named member hereby agrees to forward to this association within thirty days after the issuance of each and every regular assessment that shall be made by this association, the amount of such assessment under this policy. And it is further agreed and accepted that if any such assessment is not paid within thirty days from the date thereof, then this certificate shall become null and void and of not effect, and all liability of this association to such delinquent member, and of his or her liability to this association shall cease, and all money paid, on this certificate shall thereupon become forfeited to this association.

Second. If the death of the above named member shall occur within one year from the date of this certificate, the beneficiary shall not receive more than one-fourth of the highest sum named in this
43 certificate. If said death occur after one year and within two years from the date of this certificate, the beneficiary shall not receive more than one-half the highest amount named in this certificate. If said death occur after two year- and within three years, the beneficiary shall not receive more than three-fourths the highest sum named in this certificate. If said death occur after three

years, then the beneficiary shall be entitled to the highest sum named therein, subject to the agreeemnts and conditions set forth above and on the back of this certificate, all of which are made a part of this agreement, as fully as though set forth in the body thereof.

The Old Wayne Mutual Life Association, Indianapolis.

In witness whereof, the said Old Wayne Mutual Life Association has hereunto affixed its corporate seal, and caused this certificate to be signed by its President and secretary at Indianapolis, State of Indiana, on the 3rd day of December, A. D. 1897.

L. C. STEWART, *President.*

C. C. GILMORE, *Secretary.*

The following conditions and agreements referred to in the body of this certificate are also made and accepted as part and parcel of this contract.

First. That no misrepresentation- have been made; no untrue answers given to the questions contained in the application no facts suppressed, and no fraud or deception used by the applicant, calculated to deceive or mislead the agents or officers of the association.

44 Second. A printed or written notice of assessments directed to each member as it appears on the books of the association, and deposited in the post office, shall be deemed sufficient notice. Due notice must be given to the association by each member, of any change by him or her, of residence or post office address.

Third. When a certificate becomes a claim upon this association, notice of death should be immediately forwarded to the office, and a blank form for "proof of death" will at once be forwarded to the beneficiary. In reckoning the payment of claims, all losses are dated from the time the proofs of death are received, approved and placed on file in the office of the association.

Fourth. Commencing January first of each year, each year shall be divided into six parts or divisions: January and February constituting the first, March and April the second, May and June the third, July and August, the fourth, September and October the fifth, November and December the sixth. All bi-monthly premiums or assessments on said policy, and on all other policies issued by said association under the plan of insurance under which this policy is issued, which shall be received by said association during any such part of divisions shall constitute a fund for the following uses and purposes, viz: twenty per cent. thereof may be used for the payment of expenses of the association and salaries of officers, seventy per cent. thereof shall constitute a mortuary fund for such part or division and ten per cent. shall be set aside as a reserve fund. The reserve fund shall not be used for any purpose, until it shall reach a sum in excess of ten thousand dollars, when such excess may in the discretion of the board of directors, be used by order of the board of directors to make up any payments to policy holders for

45 which the regular assessment may not be sufficient to provide.

Fifth. Any claim under this policy which shall be ap-

proved by said association in any such part or division of a year, shall be payable from the mortuary fund for the next part or division of the year. From the mortuary fund from which any claim under this policy shall become payable any claim under any other policy issued by said association under the said plan, the terms of which shall entitle such claim to payment from such fund, may be paid.

Sixth. It is further hereby expressly understood and agreed by and between the Old Wayne Mutual Life Association, and the insured and beneficiary or beneficiaries, or their heirs, administrators or assigns in this policy, that, in the event said Association does not call or require the payment of an assessment upon this policy in excess of the estimated rate of assessment for the age at which insured, as shown in the table printed on back of this policy, whenever this policy shall become a claim by reason of the death of the insured, should be amount raised by a like assessment upon all members of the class to which this policy belongs be insufficient to pay in cash the full amount of this policy and all other claims for which such assessment was made, then, and in that event, this policy's pro rata proportion of such deficiency shall be and constitute a lien upon this policy, and shall be charged against the same and be deducted from the face value of this policy and accepted by all parties beneficiaries thereto as a valid indebtedness and charge against the same in favor of the Association.

Seventh. The following are risks which are not included in this contract, nor assigned by this Association, and therefore the consideration thereof shall be deemed to have failed, and this con-
46 tract and policy and all claims thereunder, shall be void and all payments made thereon shall be forfeited to said association, if the insured shall die by his own hand, or act, whether sane or insane, or at the hands of justice; or shall die in consequence of a duel, or of violation or attempted violation of any criminal law of the United States or of the state, territory or country in which said insured may be; or in consequence of war, invasion or any voluntary exposure to unnecessary or hazardous venture; or in consequence of being personally engaged in mining, blasting, wrecking, submarine operations, aeronautic ascensions, arctic explorations, railroad or steamboat service, as engineer, fireman, or brakeman, or in the production, use custody or transportation of highly inflammable or explosive substances.

Eighth. This policy shall—take effect until the advanced premium or estimate thereon shall be paid to the association or its authorized agent, also one bi-monthly premium shall have been levied, become due, and been collected thereon while the insured shall be in good health and during his life time and shall be incontestible, after one year from the date of this issue, except for fraud, or misrepresentation in the application upon which the same was issued or a breach of its conditions or of the covenants and agreements contained in such application. No alteration or discharge of this contract, waiver of any default in any condition thereof, or the grant of any permit or credit shall be valid and binding upon this association, un-

less the same shall be in writing and signed by its President or Secretary. For all purposes and in all cases this contract shall be deemed to have been made at the principal office of this association in the State of Indiana, U. S. A., and all benefits and claims thereunder shall be payable at such office, and become due
47 and payable within ninety days next after the acceptance by this association of proof satisfactory to it by affidavits showing the death of the insured and such other facts as shall be required by the association, and made out on blank form adopted and to be furnished by it for such purpose, and shall accrue, and be paid in conformity with the by-laws and the rules and regulations of this association and these conditions and provisions.

Ninth. It is further understood and agreed that all policies in Class B, to which this policy belongs shall be a separate and distinct class, and shall not share or be entitled to share in any fund belonging to any other class or division of this association, and shall not be liable for any losses or claims accruing in any other class or division of this association.

Limitation of Action.

Tenth. It is expressly understood and agreed that *no* action shall be maintained, nor recovery had for any claim under, or by virtue of this policy, after the lapse of six months from the death of the member.

In the Court of Common Pleas of Susquehanna County.

No. 244. August Term, 1900.

SARAH MCDONOUGH and JOHN HERRITY, Adm'r of the Estate of WINIFRED HERRITY, Deceased,

vs.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

Assumpsit.

The above action is brought to recover the amount of a certain policy of insurance upon the life of Patrick McNally, now
48 deceased, of Scranton, Pa., who died November 14, 1898.

That said policy of insurance and the contract touching the issuing of the same were executed in the State of Indiana in which State all provisions limiting liability on policies where suit is not brought within a certain time are held void and of no account.

That by the terms of said policy the amount thereof namely the sum of five thousand dollars is payable to Winifred Herrity and Sarah McDonough.

That said Winifred Herrity is now dead, and John Herrity has been legally and duly appointed administrator of her estate.

That the said the Old Wayne Mutual Life Association of Indianapolis, Indiana, defendant is a mutual life insurance association foreign to the State of Pennsylvania, to-wit: of the State of Indiana, as aforesaid and as such has been doing business of life insurance in the State of Pennsylvania more particularly in the Counties of Susequehanna and Lackawanna — said State of Pennsylvania, issuing policies of life insurance to numerous and divers residents of said counties and State for many years upon application therefor taken in said counties of Susquehanna and Lackawanna and was transacting such business of life insurance in said State and counties on the third day of December 1897 and before and since till July 5th 1900 and after.

That the said, The Old Wayne Mutual Life Association has no duly appointed agent in said County of Susquehanna, State of Pennsylvania for the acceptance of service of process other than the Commissioner of Insurance of the State of Pennsylvania.

49 The writ of Summons in this action duly issued by the Court of Common Pleas of Susquehanna County directing the said Defendant The Old Wayne Mutual Life Association of Indianapolis, Indiana, to appear and answer was legally and duly served on the Commissioner of Insurance of the State of Pennsylvania on the 26th day of September, 1900, the said Commissioner of Insurance for the State of Pennsylvania being the proper person for service in this case.

That the said defendant The Old Wayne Mutual Life Association of Indianapolis Indiana did upon the third day of December A. D. 1897, issue to Patrick McNally its certain certificate or policy of insurance when and whereby it obligated itself to pay to Winifred Herrity and Sarah McDonough the sum of five thousand dollars upon proof of the death of said Patrick McNally, who died November 14th 1898 as aforesaid; that at the time of said death said policy was in full force and effect; that notice and proof of said death according to the terms of said policy was given and furnished to the said defendant, but the said defendant neglected failed and refused to pay said sum due on said policy and still refuses and neglects to pay the sum due on said policy, namely, the sum of five thousand dollars, with interest from November 26th 1898, at which time proofs of the death of said Patrick McNally were received by the said, The Old Wayne Mutual Life Association of Indianapolis, Indiana, defendant; the said amount being justly due and payable; this suit was brought and to this statement or declaration attaches a copy of the policy.

Winifred Herrity is now dead and John Herrity has been legally and duly appointed her administrator.

C. S. WOODRUFF,
MILLER S. ALLEN,
Att'ys for P'l'ffs.

50 Copy of Backing: 244 August Term 1900. Sarah McDonough and John Herrity, Admr. *vs.* The Old Wayne Mutual Life Assn. of Indianapolis, Indiana. Declaration. Filed February 22, 1900.

Copy of Notice.

No. 244. August Term, 1900.

In the Court of Common Pleas of Susquehanna County.

SARAH MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winifred Herrity, Dec'd,

vs.

THE OLD WAYNE MUTUAL LIFE INSURANCE COMPANY OF INDIANAPOLIS, INDIANA.

Assumpsit.

To Hon. Israel W. Durham, Insurance Commissioner for the State of Pennsylvania.

Take notice that the plaintiff- above named, have filed their declaration in the above recited action in the Court of Common Pleas of Susquehanna County, and that judgment will be taken if no appearance is entered, or an affidavit of defense be filed by defendant within fifteen days of the service of this notice upon you.

C. S. WOODRUFF,
MILLER S. ALLEN,
Att'ys for Plaintiffs.

Feby. 23, 1901.

51 DAUPHIN COUNTY, *ss:*

[SEAL.] Edgar C. Hummel, Deputy Sheriff, being duly sworn according to law, deposes and says that he served a copy of the foregoing notice upon Hon. Israel W. Durham, Insurance Commissioner for the State of Pennsylvania, on the 27th day of Feby. 1901.

EDGAR C. HUMMEL,
Deputy Sheriff.

Sworn and subscribed before me Feby. 27, 1901.

J. G. DIFFENDERFER,
Prothonotary.

Sheriff's costs $1.75.

Copy of Præc. for Judgment.

No. 244. August Term, 1900.

SARAH MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winifred Herrity, Deceased,
vs.
THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA.

In the Court of Common Pleas of Susquehanna County.

Now April 16 1901, on motion of Miller S. Allen, the Court directs judgment for want of an appearance.
By the Court,

D. W. SEARLE, *P. J.*

52 Copy of Backing: 244 August Term 1900 McDonough and Herrity *vs.* The Old Wayne Mutual Life Asosciation. Præc. for judgment. Filed April 16, 1901.

Defendants. Satisfaction.	Plaintiffs. Christian Name.	Surname.	Term. No.	Month.	Year.
The Old Wayne Mutual Life Ass'n. of Ind.	Ind.	Sarah McDonough	244	Aug.	1900.

Date of lien. Month.	Day.	Nature of lien. Year.	Date of Interest.	Debt. Dollars. Cts.	Costs Dollars Cts
Apr	16	1901 Judgt. on suit Nov. 14, 1898	14.50	$1250.00	

COMMONWEALTH OF PENNSYLVANIA, *County of Susquehanna, ss:*

I, H. F. Manzer Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein Sarah McDonough and John Herrity Admr. of the estate of Winifred Herrity deceased Plaintiffs, and The Old Wayne Mutual Life Association of Indianapolis, Indiana, defendant, so full and entire as the same remains of record before the said Court, at No. 244 of August Term, A. D. 1900.

In testimony whereof, I have hereunto set my hand and
53 affixed the seal of said Court, this 15th day of May, A. D. 1901.

[SEAL.]

H. F. MANZER,
Prothonotary.

STATE OF PENNSYLVANIA, *County of Susquehanna, ss:*

I, D. W. Searle, President Judge of the Thirty Fourth Judicial District, composed of the County of Susquehanna, do certify that H.

F. Manzer to whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County, was at the time of so doing, and now is Prothonotary in and for said County of Susquehanna, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in courts of *in*dicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

D. W. SEARLE,
President Judge.

COMMONWEALTH OF PENNSYLVANIA, *County of Susquehanna, ss:*

I, H. F. Manzer, Prothonotary of the Court of Common Pleas in and for said County, do certify that the Honorable D. W. Searle by whom the foregoing attestation was made, and who has thereunto subscribed his name, was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for said County, duly commissioned and qualified; to all whose acts, as such, full
54 faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of May A. D. 1901.

H. F. MANZER,
[SEAL.] *Prothonotary.*

On the back of Ex. No. 1 is endorsed: No. — Term, Sarah McDonough and John Herrity Admr. of the estate of Sinifred Herrity deceased. *versus* The Old Wayne Mutual Life Association of Indianapolis Indiana. Exemplified record. From Susquehanna County. Debt, $1250.00 Int. from November 14, 1898. Costs $14.50 Record $10.00 Entered and filed —— —— Prothonotary.

55 Mr. DEITCH: I now offer in evidence the Laws of Pennsylvania entitled "An Act amending an Act entitled 'An Act to establish an Insurance Department. Approved the 4th day of April, Anno Domini, 1873, session laws of 1883, of the Laws of Pennsylvania on page 134.

Mr. KETCHAM: The defendant objects to this evidence for the reason that there is no proper or sufficient authentification of this statute as required either by the Act of Congress or by the Act of the Legislature of Indiana. It does not comply with Section 458. Section 475 is an Act which is known as 335 of the Acts of 1881 and is as follows:

"Every Act of the Legislature of any one of the states or territories of the United States, certified by the secretary, and having the seal of the state or territory affixed thereto, shall be deemed authentic and receive full faith and credit when offered in evidence in any Court within the State."

Section 461 is as follows:

"The printed Statute books of the several States and territories of the United States, purporting to be printed under the authority of those states and territories, and any copy of any statute, or any part thereof, contained therein, having attached thereto the certificate of the Secretary of State, under seal of the State, certifying the copy to be complete and correct; that the statute book, from which the copy is taken, is deposited in the office of the Secretary or in the State Library; and is, by him, believed to have been received under the authority of the State or territory purporting to have enacted the same—shall be presumptive evidence in all courts, of the legislative acts, public or private, of those states or territories respectively."

Here is the volume. Here is the title. "Laws of the General Assembly of the State of Pennsylvania passed at the session
56 of 1883, in the 107th year of Independence, together with the proclamation by the Governor declaring that he has filed certain bills in the office of the Secretary of the Commonwealth with his objections thereto and a list of charters of corporations organized under the General Corporation Act of April 29th, 1874 and the supplement thereto.

By Authority.

ALLEN S. HART,
State Printer, 1883."

This is attached to this volume at page 244:

"Office of the Secretary of the Commonwealth, Harrisburg. I certify that in obedience to the direction of an Act of the General Assembly of the Commonwealth of Pennsylvania I have collated and corrected by the original rolls on file in this office, the contents of the printed copies of this edition of the laws and resolutions of the General Assembly passed during the session under this date, Anno Domini 1883. U. S. Stringer, Secretary of the Commonwealth."

The Court knows judicially I submit, that there is no such person as U. S. Stringer and he cannot be secretary of the Commonwealth because there is no such person in law as U. S. Stringer, so that it does not apply. This is a copy of the Acts of a particular session of the General Assembly. It is not a statute book of Pennsylvania and does not profess to be printed under the authority of that state. It does not profess to be the Statutes of Pennsylvania at all. The Court will know that there are statutes and statutes. The revision of 1852 was an authorized revision. The revision of 1876 was not an authorized revision. The revision of 1881 was an authorized revision. There are two authorized revisions, possibly three, 1852, 1861 and 1881.

57 The Court overruled the objection; to which ruling of the Court the defendant, by counsel, at the time excepted.

The said statute, so offered and admitted in evidence was read to the Court, a copy of which is in the words and figures following, to-wit:

"An Act Amending an Act Entitled 'An Act to Establish an Insurance Department,' Approved the Fourth Day of April, Anno Domini One Thousand Eight Hundred and Seventy-three.

SECTION 1. Be it enacted, &c., That section thirteen of said act which reads as follows: namely, "No insurance company, not of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State, so designated, such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this State continues such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with service at the office of said company within this State, and that such service of process according to this stipuation, shall be sufficient service on the company. The term process includes any writ of summons, subpœna, or order, whereby any suit or proceeding shall be commenced, or which shall be issued in or upon any action, suit or proceedings in any court of this Commonwealth, having juris-
58 diction of the subject matter," be and the same is hereby amended as follows: "No insurance company, not of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the Insurance Commissioner, or the party designated by him, or the agent specified by the Company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State so designated, such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this State continues, such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with the service at the office of the said company within this State, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term process shall be construed to mean and include any and every writ, rule, order, notice, or decree, including any process of execution that may issue in or upon any action, suit, or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any other Court of this Commonwealth having jurisdiction of the subject matter in controversy, and all writs, rules, orders, notices, or decrees aforesaid, shall be directed to the sheriff constable, or other officer authorized by law to serve similar writs, of the county wherein the

same shall be issued, who is hereby authorized to serve the same on any and every person or persons, body politic or corporate, named in said process with said company, either as plaintiff, de-
59 fendant or otherwise, or who may be impleaded in said action, suit, or proceeding with said company found in said county, and either before or after the service on the person or persons body politic or corporate found in said county aforesaid as may be directed by the plaintiff or person issuing said process or his attorney; and in the absence of such direction, as shall be most convenient, the officer to whom said process may be directed shall, by writing endorsed on, or attached to said process deputize the sheriff, constable, or other officer of the county where the state agent designated by any company as provided by law to receive service of process for said company may reside to serve the same on him; and in default of an agent appointed by the company as aforesaid then the officer so charged with the service of said process shall, in like manner, deputize the sheriff, constable or other officer aforesaid of the county where the agent, if any there be, named by the insurance commissioner, may reside, to serve the same on him; and in default of such agent named by such insurance commissioner as aforesaid, then in like manner to deputize the sheriff, constable or other officer as aforesaid of the county where — office of the insurance commissioner may be located to serve the same on him; and each and every service so made shall have the same force and effect, to all intents and purposes as personal service on said company in the county where said process issued; and the fees of the officers serving said process shall be the same as are allowed by law for services in similar cases with the mileage allowed by law in such cases, the distance to be computed from the residence of the officer serving or executing the same and no further and all necessary postage paid by either of said officers shall be charged for as costs in the case."

60 Mr. KETCHAM: I move the Court to strike out the Statute just offered, for the reasons:

First. That there is not sufficient evidence of its authentication and the evidence offered is not in acordance either with the Acts od Congress or the statutes of the State of Indiana.

Second. That the Act of 1883 offered in evidence provides privileges and immunities to citizens of the United States, to-wit: to this defendant, in that it attempts to deprive this defendant of its property without offering to the defendant any opportunity to defend its rights thereto, contrary to the first section of the fourteenth amendment of the Constitution of the United States.

Third. That this act of the State of Pennsylvania attempts to deprive this defendant of its property without due process of law contrary to the first section of the 14th amendment of the Constitution of the United States.

Fourth. That the Act offered in evidence denies to this defendant the equal protection of the laws contrary to the first section of the 14th Amendment of the Constitution of the United States.

Fifth. That the Act in question is contrary to the last clause of the 16th Section of Article 1 of the State of Indiana in that the penalty

provided in the Act of Pennsylvania against foreign corporations attempting to do business in Pennsylvania without having complied with its laws is not proportionate to the nature of the offense.

Sixth. That the Act in question seeks to take the property and authorizes the taking of the property of this defendant without just compensation contrary to Section 21 of Article 1 of the Constitution of Indiana.

Seventh. That the Act in question denies to this defendant
61 a remedy for injury done to its property by due course of law contrary to Section 12 Article 1 of the Constitution of Indiana.

The Court overruled the motion to strike out; to which ruling of the Court the defendant, by counsel at the time excepted.

Mr. KETCHAM: I now also move the Court to strike out and withdraw from the record the transcript offered in evidence yesterday and admitted in evidence this morning for the reasons already given, to-wit:

First. That it is incompetent and illegal, in that,

(*a.*) The Act of Pennsylvania under which the alleged process was served, provides privileges and immunities to citizens of the United States; in that it attempts to deprive the defendant of its property without affording it any opportunity to defend its rights thereunder, contrary to the first section of the fourteenth amendment to the Constitution of the United States.

(*b.*) The Act of Pennsylvania under which the so-called process was served upon the Insurance Commissioner of Pennsylvania attempts to deprive this defendant of its property without due process of law, contrary to the first section of the fourteenth amendment of the Constitution of the United States.

(*c.*) The Act of Pennsylvania under which the so-called process was served upon the Insurance Commissioner of Pennsylvania denies to this defendant equal protection of the laws contrary to the first section of the fourteenth amendment of the Constitution of the United States.

(*d.*) That the alleged judgment sued upon is contrary to the last clause of the sixteenth section of Article 1 of the Constitution of Indiana, in that the penalty provided in the Act of Pennsyl-
62 vania against foreign corporations attempting to do business in Pennsylvania, without having complied with its laws, is not proportionate to the nature of the offense.

(*e.*) That the alleged judgment offered in evidence and the Act of Pennsylvania under which it was rendered, seeks to take the property of this defendant without just compensation contrary to Section 21 of Article 1 of the Constitution of Indiana.

(*f.*) That the alleged judgment offered in evidence denies to this defendant any remedy for injury done to its property by due course of law contrary to the provisions of Section 12 of Article 1 of the Constitution of Indiana.

Second. For the reason that the alleged transcript is not certified according to law; that the certificate to the transcript is by H. F. Manzer, prothonotary of the Court of Common Pleas, and it is cer-

fied to by D. W. Searle, who is alleged to be president judge of some place in Pennsylvania, and that his certificate is certified to by H. F. Manzer, prothonotary. That there is no person known to the law as H. F. Manzer or D. W. Searle; a man in this country has to have a name and to authenticate a writing by the name of Carter would constitute no justification to a sheriff for attempting to serve a process or take property or for V. Carter to do so would constitute no warrant of law as the Supreme Court of this State has recently held and as it has always been known to be the law.

Third. That there does not appear from this so-called transcript to have been any judgment entered; there is no judgment set out in the transcript as I have seen but there is a foot note memorandum—I do not know what you may call it—it is not anything known in law—something cut out from an idex but not a judgment.

Fourth. That there never was any complaint or declaration
63 filed in the Court of Common Pleas for the Commonwealth of Pennsylvania.

Fifth. That the alleged service by the so-called sheriff in Susquehanna county is void and of no effect for the reason that it purports to have been done by the sheriff of a county beyond the limits of the county of Susquehanna.

Sixth. That it affirmatively appears upon the face of the papers filed, that the contract sued upon in Pennsylvania was not a contract executed in Pennsylvania but was a contract executed in the State of Indiana, and in that connection I will call your Honor's attention to a statement on that point in the pleading over the signature of Miller S. Allen, attorney for plaintiff, after setting out the contract of insurance, as follows: "The above contract of insurance is governed by the laws of the State of Indiana, the contract having been entered into at Indianapolis, Indiana."

Seventh. That there was no præcipe for the alias summons to the prothonotary, the alleged præcipe being as follows: "To H. F. Manzer, Prothonotary" there being no such person as H. F. Manzer, and it being impossible to ascertain from the recitals of the alleged præcipe anywhere who either H. F. Manzer or D. W. Searle was; the summons is under the attest of the Honorable D. W. Searle and is attested by H. F. Manzer, prothonotary. There is no averment in the so-called transcript that any person under the law, occupying a judicial position or any presiding judge of the Common Pleas Court of susquehanna county, had executed this writ under the name of D. W. Searle. There is no averment that any person who might be a prothonotary had attested the summons under the name of H. F. Manzer, and this Court has to accept the statement of the transcript as it comes; that is, it is a transcript by H. F. Manzer,
64 attested by D. W. Searle. The alias summons found in the transfer is signed by H. F. Manzer and it professes to be under the attest of D. W. Searle, president of the Court of Common Pleas. A copy of the return is as follows: "Served The Old Wayne Mutual Life Assurance Association of Indianapolis, Indiana, an insurance company incorporated under the laws of the State of Indiana, by giving September 26th 1900 a true and attested copy of the within

writ to Israel W. Durham, Insurance Commissioner for the State of Pennsylvania, and making known to him the contents thereof, the said Association having no attorney in the State of Pennsylvania upon whom service could be made.

So answers.

WENCEL HARTMAN, *Sheriff.*"

Attached to this is

"I hereby authorize and depute Wencel Hartman, Sheriff of Philadelphia county, to serve the within writ according to law on the Insurance Commissioner of Pennsylvania and make return of the same.

W. J. MAXEY, *Sheriff.*

September 24–1900."

for the reason that it appears never to have been returned by any sheriff or any officer authorized to act as sheriff, the return being made by one W. J. Maxey, whom the law cannot know as an officer.

Eighth. That the affidavit made by Mr. Hummel, deputy sheriff, of his doings is not verified but purports only to have been verified before one J. G. Diffenderfer, prothonotary.

And for the additional reason that under and by virtue of the Act in question all foreign corporations, including this de-
65 fendant, were refused permission to do business in the State of Pennsylvania until such foreign corporation had filed with the Insurance Commissioner of this State a written stipulation duly authenticated that any legal process affecting a company served on the Insurance Commissioner or the party designated by him or the agent specified by the Company to receive service of process for the Company shall have the same effect as those served personally on the Company within the State, and that there was no evidence tending to show that such certificate had not been filed, and there was no evidence tending to show, but the evidence included in the transcript is to the effect that the contract in question upon which the alleged judgment was entered was made, not in Pennsylvania, but made in Indiana, and therefore that there was no right to serve notice of process upon the Insurance Commissioner in the absence of a showing that there was no agent of the defendant within the State of Pennsylvania; that unless it affirmatively appear that there was no agent of the defendant at that time within the State of Pennsylvania, service of process upon the Insurance Commissioner would, under the very act itself, be void.

The Court overruled the objection; to which ruling of the Court the defendant, by counsel, at the time excepted.

Plaintiff rests.

Defendant rests.

And this was all the evidence in this cause.

66 STATE OF INDIANA, *County of Marion, ss:*

I, Charles D. Johnson, Official Reporter of the Superior Court of Marion County, Indiana, duly appointed and qualified, hereby certify that upon the trial of this cause, wherein Sarah McDonough is

plaintiff, and the Old Wayne Mutual Life Association is defendant, I took down in shorthand all of the oral evidence given, including both questions and answers, and the documentary evidence, and noted all of the objections made to the admission of evidence, the rulings of the Court as to the admission and rejection of evidence, and the exceptions taken thereto; that having been requested by the defendant to furnish it with a typewritten transcript of all of said proceedings, so taken and noted by me, including all documentary evidence, I prepared the foregoing transcript, and hereby certify that said transcript contains all the evidence given in said cause, so taken by me upon said trial, at the time and place aforesaid.

CHARLES D. JOHNSON,
Official Reorter.

67 STATE OF INDIANA, *County of Marion, ss:*

I, Vinson Carter, Judge of the Superior Court of Marion County, State of Indiana, Hereby Certify that the foregoing transcript made by Charles D. Johnson, Official Reorter, is correct, and contains all the evidence given in said cause.

VINSON CARTER,
Judge of the Superior Court of Marion County, Indiana.

Filed May 5, 1903.
WM. E. DAVIS, *Clerk.*

68 And be it further remembered, That on the 17th day of January, 1903, the defendant filed its motion for a new trial of said cause, which motion was, on the 7th day of March, 1903, overruled by the Court, to which ruling of the Court the defendant at the time excepted, and thereupon sixty days' time was given by the Court in which to prepare and file a bill of exceptions.

And now, to-wit: on the 5 day of May, 1903, and within the time allowed by the Court therefor, the defendant tenders to the court this, its bill of exceptions, and asks that the same be signed, sealed and made a part of the record in this cause, which is now done accordingly this 5 day of May, 1903.

And I certify that the foregoing bill of exceptions contains all the evidence given in said cause.

VINSON CARTER,
Judge of the Superior Court of Marion County, Indiana.

Filed May 5, 1903.
WM. E. DAVIS, *Clerk.*

69 *Copy of Præcipe.*

No. 62233. Room 3.

Superior Court of Marion County.

SARAH MCDONOUGH ET AL.
vs.
OLD WAYNE MUTUAL LIFE INSURANCE ASSOCIATION.

The Clerk of said Court will make out a complete transcript in this cause, for appeal to the Supreme Court of Indiana, and include therein the original Bill of Exceptions containing the longhand manuscript of the evidence.

C. A. AVERILL,
Attorney for Defendant.

May 5th, 1903.

70 STATE OF INDIANA, *Marion County, ss:*

I, William E. Davis, Clerk of the Superior Court within and for the county aforesaid, do hereby certify, that the foregoing transcript contains full, true and complete copies of all the pleadings, rulings, orders, judgments, entries of proceedings had and of all the papers filed in the said Superior Court in cause number 62233, except the Bill of Exceptions containing the transcript of the evidence, the original of which transcript of evidence is transmitted as by law directed, as appear from the records and files thereof now in my custody.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Superior Court, May 7th, 1903.

[SEAL.] WM. E. DAVIS, *Clerk.*

71 STATE OF INDIANA:

Supreme Court.

THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA, Appellant,
vs.
SARA MCDONOUGH and JOHN HERRITY, Administrator of the Estate of Winnifred Herrity, Deceased, Appellees.

Assignment of Errors.

The appellant says that there is manifest error in the proceedings and judgment in said cause, in this, to-wit:

1. The court erred in overruling the demurrer of the appellant to the complaint.

2. The court erred in overruling the appellant's motion for a new trial.

WILLIAM A. KETCHAM,
CHARLES E. AVERILL,
Attorneys for Appellant.

Filed May 18, 1903.

R. A. BROWN, *Clerk.*

72 And afterwards, to-wit: On the 17th day of June, 1903, the same being the 21st Judicial Day of the May Term 1903 of said Court, the following further pleas and proceedings were had herein:

Comes now the appellant, by counsel, and the Court being advised in the premises, this cause is submitted to the Court for judgment and decree, as provided by the Act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Supreme Court adopted in relation thereto.

And afterwards, to-wit: On August 15, 1903, comes the appellant, by counsel, and files eight copies of its brief herein.

And afterwards, to-wit: On October 17, 1903, comes the appellee, by counsel, and files her petition for leave to file brief herein, and files her notice to the appellant of such petition.

And afterwards, to-wit: On October 27, 1903, Come the parties by counsel, and the Court being advised in the premises, grants appellees' petition for leave to file brief herein and the same is ordered filed.

And on the same day, come the appellees, by counsel, and file eight copies of their brief herein.

And afterwards, to-wit: On February 28, 1904, comes the appellant, by counsel, and files its suggestions for Oral Argument herein.

73 And afterwards, to-wit: On March 8, 1905, the same being the 8th Judicial Day of the November Term, 1904 of said Supreme Court, Come the parties by counsel, and the Court being advised in the premises, affirms the judgment of the Court below, with the following opinion pronounced by Monks, J.: (here insert),

74 R.

THE STATE OF INDIANA:

In the Supreme Court, November Term, 1904.

On the 8th day of March, 1905, being the 87th Judicial day of said November Term, 1904.

Hon. John V. Hadley, Chief Justice; Hon. Leander J. Monks, Hon. John H. Gillett, Hon. James H. Jordan, Hon. Oscar H. Montgomery, Justices.

No. 20128.

In the Case of THE OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS *vs.* SARAH MCDONOUGH ET AL., etc.

Opinion.

Appeal from the Marion Superior Court.

(62233.)

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises gives its opinion and judgment as follows, pronounced by Monks, J.

75 Appellees brought this action upon a judgment recovered by them against appellant, a corporation organized under the laws of this state, in the common pleas court of Susquehanna county, Pennsylvania. A trial of said cause resulted in a finding and, over a motion for a new trial, a judgment in favor of appellees. The only error assigned and not waived is that the court erred in overruling the motion for a new trial. The causes assigned for a new trial which are urged as grounds for reversal are: (1) that the decision is not sustained by sufficient evidence; (2) that the decision is contrary to law; (3) that the court erred in admitting in evidence the transcript of the judgment sued upon.

The certificate to the transcript of the judgment sued upon is signed "H. F. Manzer, Prothonotary," and the certificate of the judge is signed "D. W. Searle, President Judge." Appellant insists that said transcript was not properly authenticated under section 458 Burns' 1901 (454 R. S. 1881 and Horner 1901, R. S. U. S. 1878, p. 171) because the full christian names of said prothonotary and president judge were not signed to said certificates, and that for this reason the court erred in admitting said transcript in evidence. Appellees contend that if this insistence of appellant is correct this appeal must be dismissed for the reason that the signature to the precipe filed with the clerk under section 661 Burns 1901 (sec. 649 R. S. 1881 and Horner 1901), and the signature to the certificate authenticating the transcript in this case, are open to the same ob-

jection. We concur in this contention of appellees. We think, however, that said signatures were sufficient. Wassels *v.* State, 26 Ind. 30, (—); Vandekarr *v.* State, 51 Ind. 91, 92 (—); Collin *v.* Marvel, 145 Ind. 531, 532, (—); In Vandekarr *v.* State, *supra*, the statute required that the prosecuting attorney sign indictments, and this court held that it was sufficient if he signed by his surname in full and his christian name by its initial. The court said at page 93: "We think as a signing by the surname in full and the christian name by its initial is generally sufficient in official signatures, that it ought to be held good in the signature of a prosecuting attorney."

Appellant next insists that "even if the transcript were properly admitted in evidence, it fails to show any judgment and therefore the decision was not sustained by sufficient evidence and was contrary to law." The following appears in the transcript of the proceedings of the common pleas court of Susquehanna county,
76 Pennsylvania, as the final judgment rendered by that court in favor of appellees against appellant: "Now April 16, 1901, on motion of Miller S. Allen the court directs judgment for want of an appearance.

By the Court.

Whereupon judgment is entered against defendant in favor of plaintiff for the sum of twelve hundred and fifty dollars with interest from November 14th, 1898."

It is shown by said transcript that Miller S. Allen was the attorney of plaintiffs in said cause.

It is said in Freeman on Judgments, 4 Ed., sec. 50, "that whatever appears upon its face to be intended as the entry of a judgment it will be regarded as sufficiently formal if it shows, 1, the relief granted; and 2, that the grant was made by the court in whose records the entry is written."

It clearly appears from said entry that the same was intended to be the entry of a judgment, and it shows the relief granted and that the same was made by the common pleas court of Susquehanna county, Pennsylvania, in whose records the entry was written. Such a judgment is sufficient in form. Freeman on Judgments, 4 Ed. secs. 50-50*b*, 51; Hartley *v.* White, 94 Pa. St., 31, 34, 36, (—).

In the complaint filed in this action in the court below the following statute of Pennsylvania in force since 1883, was set out, and was also read in evidence;

"No insurance company, not of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this state so designated, such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this state continues, such stipulation cannot be revoked or

modified, except that a new one may be substituted, so as to require or dispense with the service at the office of the said company
77 within this state, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term process shall be construed to mean and include any and every writ, rule, order, notice or decree, including any process of execution that may issue in or upon any action, suit, or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any court of this Commonwealth having jurisdiction of the subject matter in controversy, and all writs, rules, orders, notices, or decrees aforesaid, shall be directed to the sheriff, constable or other officer authorized by law to serve similar writs, of the county wherein the same shall be issued, who is hereby authorized to serve the same on any and every person or persons, body politic or corporate, named in said process with said company, either as plaintiff, defendant or otherwise, or who may be impleaded in said action, suit or proceeding with said company found in said county, and either before or after the service on the person or persons body politic or corporate found in said county aforesaid as may be directed by the plaintiff or person issuing said process or his attorney; and in the absence of such direction, as shall be most convenient, the officer to whom said process may be directed shall, by writing endorsed on, or attached to said process deputize the sheriff, constable, or other officer of the county where the state agent designated by any company as provided by law to receive service of process for said company may reside to serve the same on him, and in default of an agent appointed by the company as aforesaid then the officer so charged with the service of said process shall, in like manner, deputize the sheriff, constable or other officer aforesaid of the county where the agent, if any there be, named by the insurance commissioner, may reside, to serve the same on him, and in default of such agent named by such insurance commissioner as aforesaid, then in like manner to deputize the sheriff, constable or other officer as aforesaid of the county where the office of the insurance commissioner may be located to serve the same upon him; and each and every service so made shall have the same force and effect, to all intents and purposes as personal service on said company in the county where said process is issued."

The transcript of the judgment sued upon shows that process in said cause against appellant was served upon the Insurance
78 Commissioner of the State of Pennsylvania.

It is insisted by appellant that this statute of Pennsylvania is unconstitutional and void under the 14th amendment to the constitution of the United States because it denied appellant due process of law.

A corporation can have no legal existence beyond the boundaries of the sovereignty which created it, and it can, therefore, exercise none of the functions and privileges given it by the law under which it was organized within the limits of other states except by the comity of such states. Railroad *v.* Harris, 12 Wall. (U. S.) 81, (—);

Bank of Augusta, *v.* Earle, 13 Peters, (U. S.) 558 (—); Paul *v.* Virginia, 8 Wall. (U. S.) 168, 181, 182, (—); Sparks *v.* Accident Association, 100 Iowa 458, 464-469, (—); 13 Am. & Eng. Ency. of Law, 2 ed. 837. It follows that a state has the power to exclude foreign corporations entirely, or it may allow them to transact business within its limits, imposing such conditions as it may deem proper, provided they are not repugnant to the constitution. LaFayette Ins. Co. *v.* French, 18 How. (U. S) 404, 407; (—); Hooper *v.* California, 155 U. S. 648, 652 *et seq.* (—); Wilson *v.* Seligman, 144 U. S. on page 45; Orient Ins. Co. *v.* Braggs, 172 U. S. 557, (—); *Ex Parte* Schallenberger, 96 U. S. 369; Railroad *v.* Harris, 12 Wall. (U. S.) 65 (—); Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28, (—); New York Life Co. *v.* Cravens, 178 U. S. 389; Sparks *v.* Accident Association, 100 Iowa 458, 464-466; Ehrman *v.* Teutonia Ins. Co. 1 McCrary (U. S.) 123, 126-129; Maine etc. Co. *v.* Cox, 146 Ind. 107, 109; Phœnix Ins. Co. *v.* Burdett, 112 Ind. 204, (—); 5 Rose's Notes on U. S. Reports, pp. 603-609; Kerr on Insurance, sec. 23, p. 23; 6 Thompson on Corp., sec. 7998; Brannon on Fourteenth Amendment, 44, 305, 330, 331.

In *Ex parte* Schallenberger, *supra*, a statute of Pennsylvania, the provisions of which were substantially the same as the one in controversy here, was upheld and enforced by the Supreme Court of the United States. The court said, quoting the language of Mr. Justice Swayne in Railroad *v.* Harris, 12 Wall. 65: " 'It (a corporation) cannot migrate but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to
be sued there. If it do business there it will be presumed to
79 have assented and will be bound accordingly.' * * *

Applying these principles to the present case there cannot be any doubt, as it seems to us, of the jurisdiction of the circuit court over these defendant companies. They have in express terms, in consideration of the grant of the privilege of doing business within the state (Pennsylvania), agree that they may be sued there; that is to say, they may be *found* there for the service of process issued 'by any court of the commonwealth having jurisdiction of the subject matter.' This was a condition imposed by the State upon the privilege granted and it was not unreasonable. Insurance Co. *v.* French, 18 How. 404."

Laws imposing like conditons have been uniformly sustained by the courts. Sparks *v.* Accident Association, 100 Iowa, 458, 464-469, (—); St. Clair *v.* Cox, 106 U. S. 350, 355-357, (—); Conn. Mutual Life Ins. Co. *v.* Spratley, 172 U. S. 602; New York, etc. R. Co. *v.* Estell, 147 U. S. 608; Mutual Reserve, etc Ass'n *v.* Phelps, 190 U. S. 147, 156; Briggs *v.* Life Association, 128 N. C. 5, (—) and cases cited; 5 Rose's Notes to U. S. Reports, pp. 603-609; Kerr on Insurance, sec. 23, p. 23 and cases cited in note 11.

It is evident that said statute of Pennsylvania is not in violation of the fourteenth amendment to the constitution of the United States. It is well settled that when a state has prescribed conditions upon which foreign corporations may do business within it, any

such corporations thereafter doing business in the State will be presumed to have assented to such conditons. *Ex parte* Schallenberger, 96 U. S. 369, (—); Railroad *v.* Harris, 12 Wall. 65, (—); Knapp Stout Co. *v.* National Mutual Fire Ins. Co. 30 Fed. 607, 608, (—); Stewart *v.* Harmon, 98 Fed. 192, (—); Erhman *v.* Teutonia Ins. Co. 1 McCrary (U. S.) 123, 1 Fed. 471, (—); Berry *v.* Indemnity Co., 46 Fed. 439, (—); Diamond Plate Glass Co. *v.* Minneapolis Mutual Fire Ins. Co. 55 Fed. 27, (—); Sparks *v.* National etc. Association, 100 Iowa 458, (—); Brewing Co. *v.* Insurance Co. 95 Iowa 31-36, (—); Pringle *v.* Woolworth, 90 N. Y. 509, (—); Franzer *v.* Zimmer, 35 N. Y. Supp. 614, 615, (—); Mutual Fire Ins. Co. *v.* Hammond, 106 Ky. 386, (—); Murfree on Foreign Corporations, sec. 203; 6 Thompson on Corporations, sec. 8027; Alderson on Judicial Writs and Processes, p. 207.

While many of the authorities cited hold that such presumption is conclusive and that the foreign corporation is estopped
80 from denying that it filed the stipulation required, to sustain the judgment sued upon we need only hold that in the absence of pleading and proof to the contrary such presumption will be indulged. There was nothing in the pleading and proof in this case to overthrow such presumption even if the same were permissible.

It appears from the transcript of the procedings and judgment of the common pleas court of Susquehanna county, Pennsylvania, that said action was brought upon policy of insurance on the life of one, McNally, issued to him by appellant, on December 3, 1897, payable to appellees, Sarah McDonough and Winifred Herrity; and as we have already stated, that the process in said action was served on the Insurance Commissioner of the State of Pennsylvania, and that judgment was rendered against appellant for want of an appearance. The facts alleged in the declaration in said cause show that appellant was an Indiana corporation and was doing the business of life insurance in said state of Pennsylvania before said policy was issued on December 3, 1897, and continued to do such business in said state until after the commencement of said action, and that said business was carried on "more particularly in the counties of Susquehanna and Lackawanna in said state." It was also alleged that appellant had no duly appointed agent in said county of Susquehanna upon whom process could be served other than the Commissioner of Insurance of said state, and that he was the proper person to be served with process in said cause. Said transcript shows that said court had a judge, a sheriff and a clerk and seal, that it was a court of record, and the presumption is, therefore, that it was a court of general jurisdiction, that it had jurisdiction of the subject matter of the action and of the parties thereto, and that the proceedings were regular and according to the laws of Pennsylvania, at least until want of jurisdiction is shown. Unless this want of jurisdiction appears from the transcript of the proceedings of said court, the burden of showing the same was upon appellant. American, etc. Co. *v.* Mason, 159 Ind. 15, 19 and authorities cited; Van Norman *v.* Gordon, 172 Mass. 576, 579, (—), 44 L. R. A. 840,

70 Am. St. 304 and cases cited; McMahon *v.* Eagle Life Ass'n 169 Mass. 539, (—) 61 Am. St. 306; Reid *v.* Boyd, 13 Tex. 241, (—), 65 Am. Dec. 61,62 and cases cited; note to Kelly *v.* Kelly, 42 Am. St. 398; Freeman, 42 Am. St. on Judgments, 4 Ed. sec. 565;
81 Black on Judgments, 2 Ed. sec. 896. Want of jurisdiction over the subject matter or the person of appellant is not shown by said transcript, nor has appellant by pleading or proof shown such want of jurisdiction.

Section 1, Article 4 of the Constitution of the United States provides that, "Full faith and credit shall be given in each state to the public records and judicial proceedings of every other state." This section requires that a judgment of a sister state be given the same faith and credit in every other state that it has at home. If it is conclusive where rendered it is conclusive in the other states of the Union. 2 Freeman on Judgments, sec. 575; 2 Black on Judgments, 2 Ed. sec. 859; American Life Ins. Co. *v.* Mason, 159 Ind. 15, 16, 18 and cases cited, (—); Van Norman *v.* Gordon, 172 Mass. 576, (—) 44 L. R. A. 840, 79 Am. St. 304; Parker *v.* Stoughton Mill Co. 91 Wis. 174, (—), 51 Am. St. 881; Fred Miller Brewing Co. *v.* Capital Ins. Co., 111 Iowa 590, (—); 82 Am. St. 529. No law of the state of Pennsylvania as to the faith and credit accorded to the judgments of its courts of general jurisdiction was alleged or proved at the trial of the cause. In the absence of such proof it has been held in some states that the court will presume that the laws of the state where the judgment was rendered as to the faith, and credit to be given said judgment are the same as its own, while in other states it has been held that the faith and credit to be given such judgment is to be determined by the rules of the common law which is presumed to prevail in that state. 2 Black on Judgments, 2 Ed. secs. 860; 2 Freeman on Judgments 4 Ed. sec. 571; Drago *v.* Graham, 9 Ind. 212, 215, (—); Crake *v.* Crake, 18 Ind. 156, (—). Under either view the judgment sued upon was not open to collateral attack in this state. American Life Ins. Co. *v.* Mason, 159 Ind. 15, (—), and cases cited. It was said by the court in the Mason case, citing many authorities:

"It is settled that the judgments of the courts of any state having jurisdiction over the subject matter and of the parties are conclusive on the merits in the other states of the Union until reversed on appeal, or set aside and vacated in a proper proceeding by the court which rendered the judgment, and are not, therefore, open to collateral attack."

Judgment affirmed.

82 *Judgment.*

It is therefore considered by the Court that the judgment of the Court below in the above entitled cause be in all things affirmed at the cost of the appellant.

And it is further considered and adjudged by the Court that the appellees recover of the appellant the sum of $—— for their costs and charges in this behalf expended.

83 And afterwards, to-wit: On the 17th day of May, 1905, the same being the 147th Judicial day of the November Term 1904 of said Supreme Court of Indiana, came again The Old Wayne Mutual Life Association of Indianapolis, Indiana, Plaintiff, herein, by its attorneys, and files its Writ of Error from the Supreme Court of the United States, to the said Supreme Court of Indiana, in this cause, said Writ of Error being hereto attached, and being as follows:

84 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Honorable the Judges of the Supreme Court of the State of Indiana, Greeting:

[Seal of the Supreme Court of the United States.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Sarah McDonough and John Herrity, Administrator- of the estate of Winnifred Herrity, deceased, plaintiffs, and The Old Wayne Mutual Life Association of Indianapolis, Indiana, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,

85 or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of May, in the year of our Lord one thousand nine hundred and five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Filed May 17, 1905. R. A. Brown, Clerk.

86 And afterwards, to-wit, on the 17th day of May, 1905, the same being the 147th Judicial day of the November Term 1904 of said Supreme Court of Indiana, came again The Old Wayne Mutual Life Association of Indianapolis, Indiana, and files its Citation on said Writ of Error, duly signed by Hon. William R. Day, Associate Justice of the Supreme Court of the United States, and proof of service of the Citation on *on* the attorney for the Defendant in Error, said Citation and proof of service thereof being hereto next below attached, and being as follows:

87 UNITED STATES OF AMERICA, *ss:*

To Sarah McDonough and John Herrity, Administrator of the Estate of Winnifred Herrity, Deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Indiana, wherein The Old Wayne Mutual Life Association of Indianapolis, Indiana, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States, this 15th day of May, in the year of our Lord one thousand nine hundred and five.

(Signed) WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

88 STATE OF INDIANA, *Marion County, set:*

On this 17th day of May, in the year of our Lord one thousand nine hundred and five, personally appeared Arthur Wilson before me, the subscriber, Arie Dazey, a Notary Public, within and for said County and State, and *makes* oath that he delivered a true copy of the within citation to Guilford A. Deitch, the Attorney of Record for the within-named Defendants in Error, Sarah McDonough and John Herrity, Administrators of the estate of Winnifred Herrity, deceased, in the Superior Court of Marion County, Indiana, and also in the Supreme Court of Indiana, as appears in the transcript of the proceedings of said Courts.

ARTHUR WILSON.

[Endorsed:] Filed May 17, 1905. R. A. Brown, Clerk.

Subscribed and sworn to before me, the undersigned, a Notary Public within and for said County and State, the day and year hereinabove mentioned.

Witness my hand and Notarial Seal.

[Seal Notary Public Indiana]

ARIE G. DAZEY,
Notary Public.

My Commission Expires Feb. 11, 1909.

89 And afterwards, to-wit: On the 17th day of May, 1905, the same being the 147th Judicial Day of the November Term 1904 of said Supreme Court of Indiana, came again The Old Wayne Mutual Life Association of Indianapolis, Indiana, and files its bond on appeal, in the penal sum of Two Thousand, five hundred dollars, which bond is approved by Honorable William R. Day, Associate Justice of the Supreme Court of the United States, and is hereto next below attached:

90 Know all men by these presents. That we, The Old Wayne Mutual Life Association of Indianapolis Indiana, as principal, and National Surety Company, a corporation under the laws of the State of New York, with its principal offices at No. 346 Broadway, in the City, County and State of New York, as sureties, are held and firmly bound unto Sarah McDonough and John Herrity Administrator of the estate of Winnifred Herrity deceased in the full and just sum of two thousand five hundred dollars, to be paid to the said Sarah McDonough and John Herrity Administrator of the estate of Winnifred Herrity deceased her and his certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this eighth day of May, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a term of the Supreme Court of the State of Indiana in a suit depending in said Court, between said Sarah McDonough, and said John Herrity as administrator as aforesaid as plaintiffs and said Association as defendant a judgment was rendered against the said Association and the said Association having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Sarah McDonough and the said John Herrity as administrator as aforesaid citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said The Old Wayne Mutual Life Association of Indianapolis, Indiana shall prosecute its writ of error to effect, and answer all dam-

ages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

OLD WAYNE MUTUAL LIFE ASS'N, [SEAL.]
By C. C. GILMORE, *Sec'y.* [SEAL.]

[Seal National Surety Company, New York, Incorporated 1897.

NATIONAL SURETY COMPANY,
By WILLIAM H. DRAPIER, JR.,
Its Attorney-in-Fact.

Sealed and delivered in presence of—
CLARA MORRISON.
CHARLES C. GILMORE.

Approved by—
WILLIAM R. DAY,
Associate Justice of the Supreme Court of the United States.

Attest as to signature of Old Wayne Mutual Life Association of Indianapolis, Indiana.
WILLIAM A. KETCHAM.

91 *Financial Exhibit of the National Surety Company of New York as of December 31st, 1904.*

Wm. B. Joyce, President. Samuel H. Shriver, Secretary.

Assets.

U. S. Gov. and New York City Bonds (Market Value)	$1,103,075.00
Real Estate (Unincumbered)	136,000.00
Mortgage Loans (First Liens)	4,339.65
Collateral Loans	30,000.00
Advanced on Contracts (Fully Secured)	24,320.09
Bills Receivable (Re-insuring Co's, $10,505.00, R. R. Co's, $4,843.05)	15,348.05
Cash in Banks and Home Office	484,712.95
Outstanding Premiums on Business written since Oct. 1st, 1904, Less Commissions	119,026.22
Accrued Interest on Investments	6,935.05
Total	$1,923,757.01

Liabilities.

Total Claims in Process of Adjustment	$159,851.77
Funds Deposited as Collateral Security and all other Liabilities	129,985.35
Total Unearned Premiums per State Law	574,007.52
Contingent Reserve (a Voluntary Safety Fund created by the Company)	250,000.00
Capital Stock	500,000.00
Net Surplus	309,912.37
Total	$1,923,757.01

STATE OF INDIANA, *County of Marion, ss:*

William H. Drapier, Jr., of Indianapolis, Indiana, being duly sworn, deposes and says that he is Resident Assistant Secretary of the National Surety Company, of New York and that the above and foregoing is a full, true and correct statement of the financial condition of said Company on the Thirty-first day of December, A. D. 1904, as the same remains on file in the office of the Attorney-General of the United States.

WILLIAM H. DRAPIER, JR.,
Resident Assistant Secretary.

Subscribed in my presence and sworn to before me this eighth day of May, A. D., 1905.

[Seal Notary Public Marion County, Indiana.]

CLARA MORRISON,
Notary Public.

Commission expires Oct. 2, 1905.

92 Whereas, The National Surety Company, a corporation duly incorporated under the laws of the State of New York, has deposited with me its charter or articles of incorporation and the statement required by Section 3 of an Act of Congress approved August 13, 1894, entitled "An Act Relative to recognizances, stipulations, bonds, and undertakings, and to allow certain corporations to be accepted as surety thereon; and has satisfied me that it has authority under its charter to do the business provided for in said Act, that it has a paid up capital of not less than $250,000 in cash or its equivalent, and that it is able to keep and perform its contracts;

Now, Therefore, the said National Surety Company is hereby granted authority to do business under said Act in the said State of New York and is also granted authority to do business under said Act beyond the limits of said State in any Judicial District of the United States in which it shall first have appointed an agent conformably to the provisions of Section 2 of said Act.

JOSEPH McKENNA,
Attorney-General.

Department of Justice, Washington, D. C., June 18, 1897.

DEPARTMENT OF JUSTICE, WASHINGTON, D. C.
November 15, 1901.

The annexed is a true copy of an original authorization to do business, issued by the Attorney General under the Act of Congress approved August 13, 1894.

Witness my hand and the seal of the Department.

[Seal Department of Justice.]

CECIL CLAY,
Chief Clerk.

93 *Affidavit, Acknowledgment and Justification by Guarantee or Surety Company.*

STATE OF INDIANA, *County of Marion, ss:*

On this eighth day of May, one thousand nine hundred and five before me personally came William H. Drapier, Jr., known to me to be the Attorney-in-fact of the National Surety Company, the corporation described in and which executed the within and foregoing Bond of The Old Wayne Mutual Life Association of Indianapolis as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the City of Indianapolis, State of Indiana; that he is the Attorney-in-fact of said Comapny, and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said Company has complied with the provisions of the Act of Congress of August 13th, 1894; that the seal affixed to the within Bond of The Old Wayne Mutual Life Association of Indianapolis, is the corporate seal of said Company, and was thereto affixed by order and authority of the Board of Directors of said Company, and that he signed his name thereto by like order and authority as Attorney-in-fact of said Company; and that the assets of said Company, unencumbered and liable to execution exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of One-half Million ($500,000.00) dollars.

William L. Taylor, Indianapolis, Ind. is our agent to acknowledge service in the Judicial District wherein this Bond is given.

WILLIAM H. DRAPIER, JR.,
Attorney-in-Fact.
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this eighth day of May, 1905.

[Seal Notary Public Marion County, Indiana.]

CLARA MORRISON,
Notary Public.
(Officer's Signature, Description and Seal.)

Commission expires Oct. 2, 1905.

[Endorsed:] Filed May 17, 1905. R. A. Brown, Clerk.

94 STATE OF INDIANA.

In the Supreme Court.

I, Robert A. Brown, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a full, true and complete copy of the records and proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and

all decrees and orders entered in the Supreme Court of Indiana, in the cause entitled, The Old Wayne Mutual Life Association of Indianapolis, Indiana *v.* Sarah McDonough, *et al.*, being No. 20128, of this court, also the original Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Indiana, and the original citation to the defendants in error and proof of service thereof, and the original cost bond, as appears from the originals now on file and a part of the records of my office. Which said transcript annexed hereto and hereby returned, together with said Original Writ of Error, original citation and original cost bond, I hereby certify as and for my full return to said Writ of Error.

In witness whereof, I hereto set my hand, and affix the seal of said Supreme Court of Indiana, at the city of Indianapolis, this 6th day of June, A. D. 1905.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

ROB'T A. BROWN.
Clerk Supreme Court of Indiana.

Endorsed on cover: File No. 19,814. Indiana supreme court. Term No. 312. The Old Wayne Mutual Life Association of Indianapolis, Indiana, plaintiff in error, *vs.* Sarah McDonough and John Herrity, administrator of the estate of Winnifred Herrity, deceased. Filed June 23d, 1905. File No. 19,814.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 57.

OLD WAYNE MUTUAL LIFE ASSOCIATION OF INDIANAPOLIS, INDIANA, PLAINTIFF IN ERROR,

vs.

SARAH McDONOUGH AND JOHN HERRITY, ADMINISTRATOR OF THE ESTATE OF WINNIFRED HERRITY, DECEASED.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

In this case the court is asked to review a judgment of the Supreme Court of Indiana affirming a judgment against the appellant of the Marion county superior court of that State. The suit in Indiana was upon a judgment obtained against the appellant in a State court in Pennsylvania.

This court having repeatedly held that a State has the right to prescribe the terms upon which a foreign corporation may do business therein, subject to certain exceptions, the question raised by this writ of error is whether the present case comes within the principle of such exceptions.

The act of the Pennsylvania legislature, the validity of which is one of the questions before the court, is section 1

of an act passed in 1883 (Rec., p. 32), and is in the following words:

"*Be it enacted, &c.,* That section thirteen of said act which reads as follows: namely, 'No insurance company, not of this State, nor its agents, shall do business in this State until he has filed with the insurance commissioner of this State, a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, served on the insurance commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State, so designated, such process may thereafter be served on the insurance commissioner; but so long as any liability of the stipulating company to any resident of this State continues, such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with service at the office of said company within this State, and that such service of process according to this stipulation, shall be sufficient service on the company. The term process includes any writ of summons, subpœna, or order, whereby any suit or proceeding shall be commenced, or which shall be issued in or upon any action, suit or proceedings in any court of this Commonwealth having jurisdiction of the subject-matter,' be and the same is hereby amended as follows: 'No insurance company not of this State, nor its agents, shall do business in this State until he has filed with the insurance commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, served on the insurance commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State so designated, such process may thereafter be served on the insurance commissioner; but so long as any liability of the stipulating company to any resident of this State continues, such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with the service at the office of the said company within this

State, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term process shall be construed to mean and include any and every writ, rule, order, notice, or decree, including any process of execution that may issue in or upon any action, suit or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any other court of this Commonwealth having jurisdiction of the subject-matter in controversy, and all writs, rules, orders, notices, or decrees aforesaid, shall be directed to the sheriff, constable, or other officer authorized by law to serve similar writs, of the county wherein the same shall be issued, who is hereby authorized to serve the same on any and every person or persons, body politic or corporate, named in said process with said company, either as plaintiff, defendant or otherwise, or who may be impleaded in said action, suit or proceeding with said company found in said county, and either before or after the service on the person or persons, body politic or corporate found in said county aforesaid as may be directed by the plaintiff or person issuing said process, or his attorney; and in the absence of such direction, as shall be most convenient, the officer to whom said process may be directed, shall, by writing endorsed on, or attached to said process deputize the sheriff, constable, or any officer of the county where the State agent designated by any company as provided by law to receive service of process for said company, may reside to serve the same on him; and in default of an agent appointed by the company as aforesaid, then the officer so charged with the service of said process, shall in like manner deputize the sheriff, constable, or other officer aforesaid of the county, where the agent, if any there be, named by the insurance commissioner, may reside, to serve the same on him; and in default of such agent named by such insurance commissioner as aforesaid, then in like manner to deputize the sheriff, constable or other officer as aforesaid of the county where the office of the insurance commissioner may be located to serve the same on him; and each and every service so made shall have the same force and effect, to all intents and purposes, as personal service on said company in the county where said process issued; and the fees of the officers serving said process, shall be the same as are allowed by law for services in similar cases with the mileage allowed by law in

such cases, the distance to be computed from the residence of the officer serving or executing the same and no further and all necessary postage paid by either of said officers shall be charged for as costs in the case' " (Rec., pp. 32, 33).

This act being in force, an action was brought by the defendants in error against the plaintiff in error (a corporation organized under the laws of Indiana), in the court of common pleas of Susquehanna county, Pennsylvania. The original summons was issued July 5, 1900 (15). On the same day there was filed in that court "Copy of plaintiffs' statement" (17). This summons was returned by the sheriff *nihil habet* (17).

On the "24th day of September, 190–," an *alias* summons was issued (22).

The *alias* writ was returned by the sheriff served on the appellant by giving a copy on September 26, 1900, "to Israel W. Durham, insurance commissioner for the State of Pennsylvania, and making known to him the contents thereof, the said association having no attorney in the State of Pennsylvania upon whom service could be made" (22).

In February, 1900, the declaration in the case was filed. From the backing of the declaration, as found on page 27 of the record, it would appear that this declaration was filed February 22, 1900. This is an obvious mistake, as the original summons was not issued until the following August. On page 28 is a copy of a notice to the insurance commissioner that the declaration had been filed. This notice is dated February 23, 1901. The sheriff's return shows that a copy of the declaration was served on the insurance commissioner on February 27, 1901.

In the plaintiffs' statement, which was filed when the original summons was issued (17), it was set forth that the claim upon which the suit was brought was upon a policy of insurance dated the 3d day of December, 1897, No. 01159, which was "executed and delivered by the defendant to the plaintiffs on the said 3d day of December, A. D. 1897, at

Scranton, Pennsylvania." But when the declaration proper was filed it appeared by a copy of the policy sued on, which was annexed to the declaration, that by its terms no recovery could be had for any claim under the policy after a lapse of six months from the death of the member whose life was insured (26). As the declaration set forth that the insured died in November, 1898 (26), it is obvious that the suit was barred if this provision was enforceable. But at the foot of the copy of the contract which was annexed to the plaintiffs' statement (21) was this note:

"The above contract of insurance is governed by the laws of the State of Indiana, the contract having been entered into at Indianapolis, Indiana.

"MILLER S. ALLEN,
"Attorney for Plaintiffs."

The declaration subsequently filed contained this paragraph (26):

"That said policy of insurance and the contract touching the issuing of the same were executed in the State of Indiana, in which State all provisions limiting liability on policies where suit is not brought in a certain time are held void and of no account."

A judgment by default having been entered against the company in the Pennsylvania court on the 16th day of April, 1901 (29), suit was brought on the judgment so obtained against the company, in Indiana, in June, 1901 (1).

By its pleas in the Indiana suit, the defendant, after denying the material allegations of the complaint, alleged by way of further defense that the company was an Indiana corporation; that it had never at any time been admitted to business in Pennsylvania or had any officer or agent in that State for the transaction of business; that no officer or agent of the company was in Pennsylvania at the time of the commencement of the suit there, or at any time thereafter; that no summons was served on the defendant at any time or place, and that the first notice or knowledge or information which

the company ever had of the recovery of the judgment sued on was long after the time it was claimed by plaintiffs the judgment had been recovered (6).

The plaintiffs in the suit by their replication denied all the material averments of the answer (7). At the trial, when the record in the Pennsylvania case was offered in evidence on behalf of the plaintiffs, it was objected to on the ground, among others, that the Pennsylvania statute under which process was served upon the insurance commissioner of that State was invalid because it deprived the defendant of its property without due process of law, contrary to the first clause of the fourteenth amendment to the Constitution of the United States (13).

The court overruled the objection and admitted the transcript in evidence; to which ruling of the court the defendant, by counsel, at the time duly excepted (15).

Later in the trial the same point was again ruled upon in the same manner by the trial court on a motion to strike out the Pennsylvania statute (33), and again on a motion to strike out the transcript (34, 36).

There was no further evidence in the case and judgment was entered in favor of the plaintiff. Subsequently, on motion to set aside the judgment and grant a new trial, the same ruling was again made by the trial court (9).

An appeal having been taken to the Supreme Court of Indiana from the judgment so rendered, the judgment was there affirmed (45).

In the opinion of the latter court (40-45) it was held that the Pennsylvania statute in question was not unconstitutional under that clause of the fourteenth amendment to the Constitution of the United States which prohibits the States from depriving persons of property without due process of law.

To review the judgment of the Supreme Court of Indiana a writ of error was allowed by Mr. Justice Day (47).

Assignment of Errors.

The court below erred:

1. In affirming the judgment of the Marion county superior court.

2. In not reversing the judgment of the Marion county superior court, because there was no evidence in the case tending to show that the plaintiff in error was engaged in business in the State of Pennsylvania at the time of the service of the *alias* writ upon the insurance commissioner of that State.

3. In holding that the Pennsylvania statute set forth on pages 2 and 3 of this brief is a valid and constitutional law.

ARGUMENT.

I.

The Pennsylvania judgment is invalid, outside of that State at least, because it does not appear that when process was served on the insurance commissioner the plaintiff in error was doing business in Pennsylvania.

It has several times been held by this court that a judgment in a State court against a foreign corporation cannot be enforced in another State if when the suit was begun and carried on the defendant corporation was not engaged in business in the State. Thus, in Barrow Steamship Co. *v.* Kane, 170 U. S., 111, it was held, "upon the fundamental principle that no one shall be condemned unheard," that the jurisdiction of a State court is not supported in a federal court when the foreign corporation does no business and has

no agent in the State, although in the State courts under State statute service on any officer or employee is held valid.

And in St. Clair *v.* Cox, 106 U. S., 350, involving the statute of the State of Michigan, providing that service of process upon a foreign corporation engaged in business in the State might be upon any officer, clerk, member, or agent of such corporation, a judgment after service on an agent of the defendant was held void in other jurisdictions because it did not appear that the company was engaged in business in the State.

In Fitzgerald Co. *v.* Fitzgerald, 137 U. S., 98, 106, it was held that when a foreign corporation was not doing business in a State, service on its president was unavailing, whether (as claimed by the corporation) or not he was inveigled into the State for the purpose of having process served on him.

In Mutual Life Ins. Co. *v.* Spratley, 172 U. S., 602, it is said that in a suit where no property of a foreign corporation is within the State and the judgment sought is a personal one, it is a material inquiry whether the foreign corporation is engaged in doing business in the State, citing Goldey *v.* Morning News, 156 U. S., 519; Merchants' Mfg. Co. *v.* Grand Trunk R. Co., 13 Fed. Rep., 358. And in Spratley's case it was further held that service must be on some agent so far representing the corporation in the State that he may properly be held in law an agent to receive such process on behalf of the corporation. It was further held that service on an agent sent into the State to compromise the claim which was the subject of the suit was good.

Return of service upon an officer of a foreign corporation is insufficient unless it appears from the return or from the record that the company is doing business in the State when the suit is begun (Central Grain & Stock Ex. *v.* Board of Trade, 125 Fed., 467).

In the suit brought in Indiana on the Pennsylvania judgment it was averred in the complaint that the defendant "is now and was on the 3d day of December, 1897, and long prior and subsequent thereto, engaged in the transaction of its said business in the State of Pennsylvania, soliciting applications for insurance from and issuing policies to residents of said State" (2). This is one of the material allegations denied by paragraph 1 of the answer in the case (6). No evidence was offered to support this averment, and it would seem that on this account alone the judgment below should be reversed.

But it will probably be claimed here that sufficient evidence on this subject is to be found in the transcript of the judgment in the Pennsylvania suit. The plaintiff's statement of claim in the Pennsylvania court, which was filed when the original summons was issued, did indeed set forth that the policy sued on was executed and delivered at Scranton, Pennsylvania (17). But this averment does not help the defendants in error for two reasons: In the first place, this court has decided that a single transaction does not constitute doing business in the State (Allgeyer *v.* Louisiana, 165 U. S., 578; Cooper Manufacturing Co. *v.* Ferguson, 113 U. S., 727). There are several other cases in the State and federal courts to the same effect (Ammons *v.* Brunswick-Balk-Collender Co., 141 Fed. Rep., 570, decided by the Circuit Court of Appeals for the Eighth Circuit; State *v.* Robb, 106 N. W. Rep., 406, in the Supreme Court of North Dakota; Jameson *v.* Simonds Law Co., 84 Pac. Rep., 269, in the Court of Appeals, First District of California).

In the next place, when they filed their declaration in the Pennsylvania suit the plaintiffs in that action carefully set out that the policy of insurance was issued in Indiana. This averment is shown to have been necessary to enable the suit to be maintained, the counsel who brought the suit evidently recognizing the fact that if the policy was a Pennsylvania contract it was barred by the provisions of the policy, which

required suit to be brought within six months after the death of the insured (36).

It was further averred in the Pennsylvania declaration that the company had been doing the business of life insurance in Pennsylvania, and particularly in the counties of Susquehanna and Lackawanna, and was transacting the business of life insurance in that State and in the counties above mentioned at the date of the policy sued on and before and afterwards until July 5th, 1900 (27). But this declaration was not filed until February, 1901 (28). This was about five months after the service of process made on the insurance commissioner of Pennsylvania (22). Besides, the service of a copy of the declaration on the insurance commissioner could have no effect whatever, because it is not authorized by the Pennsylvania statute in question. That act (32) attempts to authorize in certain cases service of process upon the insurance commissioner, and further provides (32) that "the term process shall be construed to mean and include any and every writ, rule, order, notice, or decree, including any process of execution that may issue in or upon any action, suit, or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any other court of this Commonwealth having jurisdiction of the subject-matter in controversy, and all writs, rules, orders, notices, or decrees aforesaid, shall be directed to the sheriff, constable, or other officer authorized by law to serve similar writs, of the county wherein the same shall be issued."

Clearly the declaration in a suit does not come within this description. The notice of the filing of the declaration in this case is not addressed to the sheriff, but to the insurance commissioner himself (28). The statute evidently refers to process emanating from the court and not from counsel.

It is therefore respectfully submitted that, there being no evidence of any kind in the case that the plaintiff in error

was engaged in business in Pennsylvania at any time between the date of the policy in suit and the date of the Pennsylvania judgment, the service upon the insurance commissioner must be held to have been of no effect outside, at least, of the courts of Pennsylvania.

II.

The Pennsylvania judgment is invalid because the statute under which process was served on the insurance commissioner does not provide for any notice to the foreign corporation.

There are certain general principles bearing upon the questions involved in this writ of error that have been too often settled by this court to admit of discussion now or require careful examination of the authorities. A State may, of course, exclude altogether a foreign corporation, or may, in general, allow it to do business within its territory upon such terms as it deems proper (Bank of Augusta *v.* Earle, 13 Pet., 519; Paul *v.* Virginia, 8 Wall., 168; R. R. Co. *v.* Harris, 12 Wall., 65; *Ex parte* Schollenberger, 96 U. S., 369).

On the other hand, a judgment rendered in a State court, without personal service on the defendant, may be a good judgment, even *in personam,* against such defendant in that State, but void everywhere else (Goldey *v.* Morning News, 156 U. S., 518; Barrow Steamship Co. *v.* Kane, 170 U. S., 111; Grover *v.* Radcliffe, 137 U. S., 287; La Fayette Ins. Co. *v.* French, 18 How., 406).

Due process of law requires notice and an opportunity to be heard (Lasere *v.* Rochereau, 17 Wall., 437; Orchard *v.* Alexander, 157 U. S., 372, 383; McVeigh *v.* U. S., 11 Wall., 259).

And upon the very point of the right of a State to determine the conditions upon which it will permit foreign corporations to carry on their business within its borders this court

has repeatedly held that such right may be affected by the Constitution of the United States. The power of the State in this regard is subject to "such limitations on her sovereignty as may be found in the fundamental law of the Union" (Ducat *v.* Chicago, 10 Wall., 410, 415).

In La Fayette Insurance Company *v.* French, 18 How., 406, 407, it is said:

"Whenever an action is brought in one State on a judgment recovered in another, it is not enough to show it to be valid in the State where it was rendered; it must also appear that the defendant was either personally within the jurisdiction of the State, or had legal notice of the suit, and was in some way subject to its laws, so as to be bound to appear and contest the suit, or suffer a judgment by default. In more general terms, the doctrine of this court, as well as of the courts of many of the States, is, that this act of Congress was not designed to displace that principle of natural justice which requires a person to have notice of a suit before he can be conclusively bound by its result; nor those rules of public law which protect persons and property within one State from the exercise of jurisdiction over them by another."

* * * * * * *

"The inquiry is not whether the defendant was personally within the State, but whether he, or some one authorized to act for him, in reference to the suit, had notice and appeared; or, if he did not appear, whether he was bound to appear, or suffer a judgment by default. And the true question in this case is, whether this corporation had such notice of the suit, and was so far subject to the jurisdiction and laws of Ohio, that it was bound to appear, or take the consequences of non-appearance.

"A corporation created by Indiana can transact business in Ohio, only with the consent, express or implied, of the latter State (13 Pet., 519). This consent may be accompanied by such conditions as Ohio may think fit to impose; and these conditions must be deemed valid and effectual by other States, and by this court, provided they are not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense."

A corporation lawfully doing business in a State is no more bound by a general unconstitutional statute than a citizen of the State (Cargill Co. *v.* Minnesota, 180 U. S., 452; Carroll *v.* Greenwich Ins. Co., 199 U. S., 409).

While this court holds that a foreign corporation must comply with State laws, it is not to be understood to intimate that State laws invalid, as contrary to the Constitution of the United States, can be imposed as a condition upon the right of such a corporation to do business within the State (Dayton Coal & Iron Co. *v.* Barton, 183 U. S., 23).

The right of a State to allow foreign corporations to do business in the State on such terms as it pleases is "subject always of course to the paramount authority of the Constitution of the United States" (Hooper *v.* California, 155 U. S., 648, 656).

In the leading case of Insurance Company *v.* Morse, 20 Wall., 445, 451, 455, in which it was held that a contract made by an insurance company, as a condition of doing business in the State of Wisconsin, that it would not remove suits brought against it to the Federal courts was void, Mr. Justice Hunt, delivering the opinion of the court, said:

"A man may not barter away his life or his freedom, or his substantial rights. * * * He cannot, however, bind himself in advance by an agreement, which may be specifically enforced, thus to forfeit his rights at all times and on all occasions, whenever the case may be presented." * * *

"We are not able to distinguish this agreement and this requisition, in principle, from a similar one made in the case of an individual citizen of New York. A corporation has the same right to the protection of the laws as a natural citizen, and the same right to appeal to all the courts of the country. The rights of an individual are not superior in this respect to that of a corporation."

The doctrine laid down in the last-mentioned case was affirmed in Doyle *v.* Continental Ins. Co., 94 U. S., 535; Southern Pacific R. Co. *v.* Denton, 146 U. S., 202, and in Barron *v.* Burnside, 121 U. S., 186. In the latter case an

Iowa statute was under consideration which required every foreign corporation, as a condition of obtaining permission to transact business in Iowa, to stipulate that it would not remove suits against it into the Federal courts, and made it a penal offense for any agent, officer, or employee of such corporation to transact the business of the corporation in the State when no stipulation had been filed. Barron, the plaintiff in error, was an engineer engaged in Iowa in running a locomotive belonging to a foreign railroad company. Having been arrested for a violation of the act, he sued out a writ of *habeas corpus* in the State court, and the supreme court of the State having remanded him to the custody of the sheriff, he obtained a writ of error from this court. In delivering the opinion of the court, Mr. Justice Blatchford, after referring to the fact that the railroad corporation in question had not filed the stipulation required by the Iowa statute, but had refused to do so, said:

"Its [the railroad company's] right, equally with any individual citizen, to remove into the Federal court, under the laws of the United States, such suits as are mentioned in the third section of the Iowa statute, is too firmly established by the decisions of this court to be questioned at this day; and the State of Iowa might as well pass a statute to deprive an individual citizen of another State of his right to remove such suits. As the Iowa statute makes the right to a permit dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States, the statute requiring the permit must be held to be void."

Surely the right to have notice and an opportunity to be heard before judgment is more important even than the right of a non-resident of a State to remove a suit against him from the State courts to the Federal courts. The latter right involves the question of a hearing in one court or another; the former the question whether the party shall be heard at all. Even if the right to remove a case from the State to the Federal courts could be waived, as this court has held it cannot,

the constitutional rights of the party would be preserved, because if the State court of last resort should undertake to deprive the party of any such right, a remedy would lie by writ of error from this court. But if a party be deprived altogether of an opportunity to be heard, then his rights under the Constitution are sacrificed, as well as every other right that he might have insisted upon if given an opportunity.

The fundamental objection to the Pennsylvania statute under consideration is that it does not directly or indirectly require, or even authorize, the insurance commissioner to notify foreign corporations of the service of process upon him. In a number of States acts of this kind have been passed, but they usually provide that the State officer upon whom process is served shall at once transmit to the corporation sued the papers served upon him or a copy thereof. Such a statute was sustained by this court in Mutual Reserve, &c., Ass'n *v.* Phelps, 190 U. S., 147. The Kentucky statute involved in that case, as quoted by the court on page 148, contained the following provision:

"And if process is served upon the commissioner it shall be his duty at once to send it by mail addressed to the company at its principal office."

The Kentucky statute here referred to was considered by District Judge Evans, holding the Circuit Court for the District of Kentucky, in Swan *v.* Mutual Reserve, &c., Ass'n, 100 Fed. Rep., 922. The service on the commissioner of insurance of the State of Kentucky under the statute was held to be void in that case, because at the time the service was made the company had been excluded from the State and was then not doing business therein.

It would seem that there can be no doubt that a State statute requiring a foreign corporation, as a condition of doing business in the State, to agree that suits against it might be prosecuted within the State, without service of process upon anybody or without notice of any kind, would be absolutely void. It is difficult to see any difference in effect between

such a statute and one which undertakes to authorize service of process by leaving a copy of the summons in the office of some State official without any duty on his part to attempt to communicate with the corporation at all the fact that a summons has been served upon him. The very fact of the omission from such a statute of any direction for the forwarding of the papers served or any information in regard thereto, to the defendant implies that no duty of communicating with the defendant is imposed upon the official. For all practical purposes, the law might as well provide that the sheriff shall take the summons and throw it into the river. In Ins. Co. *v.* Morse, 20 Wall., 445, and the other more recent cases affirming that case, it was held that foreign corporations were not barred from removing suits to the Federal courts notwithstanding the fact that they had filed with the State a stipulation agreeing not to do so. In the present case it is not averred, either in the suit in Pennsylvania or in the suit in Indiana, that any such stipulation had been filed. It cannot, therefore, be claimed that the plaintiff in error in this case has agreed that service of process upon the insurance commissioner of Pennsylvania might be considered service of process upon it. If it had done so, it might in a measure have protected itself by watching the office of the insurance commissioner to see from time to time during an indefinite number of years what papers had been filed in his office affecting its interests. The company would then be in the position of a taxpayer, whose rights were considered in Kuntz *v.* Sumption, 117 Ind., 1, in which the Supreme Court of Indiana said:

"We must hold that such a taxpayer is entitled to notice, or else we must hold that he is bound, at his peril, to keep vigilant watch of the proceedings (of the county board of equalization) lest property he does not own be assessed to him, or the valuation of his listed property be increased. In the absence of notice to him as an individual, he is not bound to exercise any such vigilance.

"It would be almost as unjust to compel such a taxpayer

to be constantly on the watch during the meeting of the board, as to compel a defendant who has failed to pay a note, violated a covenant, or committed a trespass (or issued an insurance policy) to watch the dockets of the court during term time."

The precise question involved here was decided by the Supreme Court of Wisconsin in Pinney *v.* Providence Loan and Investment Co., 106 Wis., 402, 403. The State statute in that case required a domestic corporation to file in a certain office a list of its officers upon whom process might be served, and further provided that if any such corporation should fail to file such list, service might be made by delivering copies of the summons and complaint to the register of deeds of the county in which the suit was brought.

The court said:

"While foreign corporations may be permitted to do business within the State upon certain conditions, or be excluded altogether, and while domestic corporations may be subject to reasonable regulations and control, yet neither can be deprived of its property without due process of law. Undoubtedly, the legislature may, as it has in certain cases, authorize constructive service of summons to be made upon corporations, as well as individuals, especially where the action concerns property located within the State; but the method adopted should be reasonably calculated to bring notice home to some of the officers or agents of the corporation, and thus secure an opportunity for being heard and making a defense before the determination. Such service was not secured 'by delivering to and leaving with the register of deeds * * * true copies of the summons and complaint as prescribed by the portion of the statute quoted. On the contrary, such service, if held to be effectual, would be well calculated to conceal from the officers and agents of the corporation the fact that such an action had been commenced. True, the register is a public officer, with duties prescribed by statute; but he is in no sense the agent or representative of 'private corporations, incorporated or organized under any law of this State.' Such corporations are supposed to be clothed with authority to select and appoint their own officers

and agents. We must hold the clause of the statute in question to be unconstitutional and void."

In Rothrock *v.* Dwelling House Ins. Co., 161 Mass., 425, suit had been brought in Massachusetts on a judgment obtained against a Massachusetts corporation in Arkansas. A statute of that State prohibited foreign corporations from doing business in Arkansas until they had filed a stipulation that service of process in actions against them might be made on the auditor of the State. The Dwelling House Insurance Co. had agents in Arkansas soliciting insurance, but did not file any such stipulation. The judgment in Arkansas was obtained after service of process had been made on the State auditor in accordance with the act. There was no provision in the law requiring the auditor to forward the papers served on him to the corporations, or give them notice in any other way, and in fact no such notice was given. The Supreme Judicial Court of Massachusetts, referring to the fact that under a similar state of facts a Federal court had held another insurance company to be estopped to deny the jurisdiction of the Arkansas court (Sherman *v.* Teutonia Insurance Co., 1 Fed. Rep., 471; 1 McCreary, 128), refused to follow that decision and held that the judgment was void.

In connection with these cases should be considered the case of Carroll *v.* N. Y., N. H. & H. R. Co., 46 Atl. Rep., 708, decided by the Supreme Court of New Jersey. In that case the statute provided that foreign corporations doing business in New Jersey might be served with process by service upon any officer, clerk, or engineer of the corporation. Service on an engineer of a boat belonging to the defendant company was held void, notwithstanding the statute, on the ground that the engineer had no such connection with the business out of which the cause of action arose as might fairly give rise to the inference that he had authority to represent the corporation in that matter.

In Wilson *v.* Seligman, 144 U. S., page 45, this court on this general question refers to two decisions in England

(Valleé *v.* Dumurgue, 4 Exch., 290; and Copin *v.* Adamson, 9 L. R. Exch., 345, affirmed on appeal, 1 Exch. Div., 17).

In Valleé *v.* Dumurgue the defendant was a shareholder in a French corporation and was sued in England upon a judgment obtained against him in France. In compliance with the French law, he had agreed in writing that process might be served on him by leaving it at a certain banking establishment in Paris, and the judgment in France had been obtained against him at the domicile of the corporation in which he was a shareholder and by service of process upon his agent in accordance with his agreement. That this case has no application to the one at bar would seem to be obvious.

Copin *v.* Adamson was another case of a suit in England upon a judgment obtained in France against a shareholder in a French corporation. In the suit in England the defendant filed a plea setting up as a defense that the judgment in France had been obtained against him without service of process or without notice of any kind. To this plea two replications were filed. The first replication set out that by the law of France *and the articles of association* of the corporation in which the defendant was a shareholder service of process upon a shareholder might be made at his elected domicile in Paris, and in default of such election might be made at a certain public office. The second replication was like the first, except that it referred only to the French law, omitting any reference to the articles of association.

On demurrer to these replications the first one was sustained on the ground that it showed that the defendant had agreed that service of process might be made upon him by leaving it at the public office referred to. Two of the three judges held that the second replication was bad, holding that the law of France alone could not make service of process upon a Government official a good service against a nonresident.

On appeal the judgment of the lower court was affirmed as to the first replication, and no decision was given as to the second replication.

So far as these English cases go, therefore, they hold that service upon a non-resident by leaving the summons at a public office is a good service when he has agreed to accept such service, but is of no validity when the law declares that it shall be a good service, but he has not given his assent to that provision.

It is respectfully submitted that the judgment of the Supreme Court of Indiana should be reversed.

A. S. WORTHINGTON,
Attorney for Plaintiff in Error.

Supreme Court of the United States.

No. 57.—October Term, 1906.

The Old Wayne Mutual Life Association of Indianapolis, Indiana, Plaintiff in Error, vs. Sarah McDonough and John Herrity, Administrator of the Estate of Winnifred Herrity, deceased.	In error to the Supreme Court of the State of Indiana.

[January 7th 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This is an action in an Indiana court against the plaintiff in error upon a judgment against it in a Pennsylvania court. The decisive questions in the case have reference to the clause of the Constitution of the United States, requiring full faith and credit to be given in each State to the public acts, records and judicial proceedings of other States, and, also, to the clause forbidding the deprivation by a State of life, liberty or property, without due process of law. There was a judgment for the plaintiffs, which was affirmed by the Supreme Court of the State.

The questions before us arise out of facts now to be stated.

On the 22d day of February 1900 the defendants in error brought an action in the Court of Common Pleas of Susquehanna County, Pennsylvania, against the Old Wayne Mutual Life Association of Indianapolis, an Indiana corporation, upon a certificate or policy of life insurance dated December 3d 1897, whereby that association agreed to pay to Winnifred Herrity and Sarah McDonough of Scranton, Pennsylvania, or their legal representatives, the sum of $5,000 upon the condition, among others, that if the person whose life was insured—Patrick McNally, of Scranton, Pennsylvania—should die within one year from the date of the certificate then Herrity and McDonough should not receive more than one-fourth of the above sum. McNally died on the 14th day of November 1898.

A summons, addressed to the sheriff of Susquehanna County, Pennsylvania, was sued out and the following return thereof was made: "Served the Old Wayne Mutual Life Association of Indianapolis, Indiana, an insurance company incorporated under the laws of the State of Indiana, by giving September 26th, 1900, a true and attested copy of the within writ to Israel W. Durham Insurance Commissioner for the

State of Pennsylvania, and making known to him the contents thereof, the said association having no attorney in the State of Pennsylvania upon whom service could be made." It does not appear, if the fact be material, that any notice of this summons was given by the Commissioner to the defendant.

Subsequently, the plaintiff filed a declaration or statement in the Pennsylvania case, which contained, among other things, the following: "That the said The Old Wayne Mutual Life Association of Indianapolis, Indiana, defendant, is a mutual life insurance association, foreign to the State of Pennsylvania, to-wit: of the State of Indiana, as aforesaid, and as such has been doing business of life insurance in the State of Pennsylvania, more particularly in the counties of Susquehanna and Lackawanna, in said State of Pennsylvania, issuing policies of life insurance to numerous and divers residents of said counties and State for many years, upon application therefor taken in said counties of Susquehanna and Lackawanna, and was transacting such business of life insurance in said State and counties on the third day of December 1897 and before and since till July 5th 1900 and after. That the said The Old Wayne Mutual Life Association has no duly appointed agent in said county of Susquehanna, State of Pennsylvania, for the acceptance of service of process other than the Commissioner of Insurance of the State of Pennsylvania. The writ of summons in this action, duly issued by the Court of Common Pleas of Susquehanna County, directing the said defendant The Old Wayne Mutual Life Association of Indianapolis, Indiana, to appear and answer, was legally and duly served on the Commissioner of Insurance of the State of Pennsylvania on the 26th day of September 1900, the said Commissioner of Insurance for the State of Pennsylvania being the proper person for service in this case."

This was followed by a notice in that case addressed to the Insurance Commissioner, and stating that judgment would be taken if no appearance was entered or an affidavit of defense filed by the association within fifteen days after service of that notice. At a later date, the Insurance Commissioner not having appeared, and no affidavit of defense having been filed, judgment was taken against the life association, by default, April 16th 1901.

The present action was brought on that judgment. The complaint in this case, filed June 21st 1900, alleged that the defendant association was on the 3d day of December 1897 and long prior and subsequent thereto engaged in the transaction of business in Pennsylvania. After setting out the provisions of the statute of Pennsylvania (to be presently referred to), the issuing of the policy, the death of McNally, and the making of the requisite proofs of loss, the complaint alleged that process in the Pennsylvania case was

served upon the Insurance Commissioner for Pennsylvania, "the said defendant having no other agent or attorney upon whom process could be served in said State of Pennsylvania."

The defendant demurred to the complaint as insufficient in law, but the demurrer was overruled. It then filed its answer, denying "each and every material allegation" in the complaint. In a separate paragraph it alleged that its only offices for the transaction of business were, and at all times had been, at Indianapolis, Indiana, where its officers had always resided; that it had never been admitted to do business in Pennsylvania, and never had an office or agency there for the transaction of business; that no one of its officers or agents was in that Commonwealth at the date of the alleged suit, nor had been there since; that no summons was ever served upon it at any time, and that it did not appear in that action; that no one ever appeared for it there who had authority to do so; and that the first notice or knowledge it ever had of the alleged judgment against it was long after the day when it appears to have been rendered.

The plaintffs replied, denying each and every material allegation of the answer.

The plaintiff in error insists that the Pennsylvania court had no jurisdiction to proceed against it; consequently, the judgment it rendered was void for the want of the due process of law required by the Fourteenth Amendment. If the defendant had no such actual, legal notice of the Pennsylvania suit as would bring it into court, or if it did not voluntarily appear therein by an authorized representative, then the Pennsylvania court was without jurisdiction, and the conclusion just stated would follow, even if the judgment would be deemed conclusive in the courts of that Commonwealth. The constitutional requirement that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no State can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law. "No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party." *Scott* v. *McNeal*, 154 *U. S.* 34, 46. No State can, by any tribunal or representative, render nugatory a provision of the supreme law. And if the conclusiveness of a judgment or decree in a court of one State is questioned in a court of another government, Federal or State, it is open, under proper averments, to inquire whether the court rendering the decree or judgment had jurisdiction to render it.

Such is the settled doctrine of this court. In the leading case of *Thompson* v. *Whitman*, 18 *Wall.* 457, 468, the whole question was fully examined

in the light of the authorities. Mr. Justice Bradley, speaking for the court and delivering its unanimous judgment, stated the conclusion to be clear that the jurisdiction of a court rendering judgment in one State may be questioned in a collateral proceeding in another State, notwithstanding the averments in the record of the judgment itself. The court, among other things, said that if it be once conceded that "the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done no statements contained therein have any force. If any such statements could be used to prevent inquiry, a slight form of words might always be adopted so as effectually to nullify the right of such inquiry. Recitals of this kind must be regarded like asseverations of good faith in a deed, which avail nothing if the instrument is shown to be fraudulent." This decision was in harmony with previous decisions. Chief Justice Marshall had long before observed in *Rose* v. *Himely*, 4 *Cranch*, 241, 269, that upon principle the operation of every judgment must depend on the power of the court to render that judgment. In *Williamson* v. *Berry*, 8 *How.* 495, 540, it was said to be well settled that the jurisdiction of any court exercising authority over a subject "may be inquired into in every other court when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings," and that the rule prevails whether "the decree or judgment has been given in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of States." In his Commentaries on the Constitution, Story, referring to *Mills* v. *Duryee*, 7 *Cranch*, 481, 484, and to the constitutional requirement as to the faith and credit to be given to the records and judicial proceedings of a State, said: "'But this does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given, to pronounce it; or the right of the State itself to exercise authority over the person or the subject-matter. The Constitution did not mean to confer [upon the States] a new power or jurisdiction, but simply to regulate the effect of the acknowledged jurisdiction over persons and things within their territory.'" In the later case of *Galpin* v. *Page*, 18 *Wall.* 350, 365–6, 418—decided after, but at the same term as, *Thompson* v. *Whitman*—the court, after referring to the general rule as to the presumption of jurisdiction in superior courts of general jurisdiction, said that such presumptions "only arise with respect to jurisdictional facts concerning which the record is silent. Presumptions are only indulged to supply the absence of evidence or averments respecting the facts presumed.

They have no place for consideration when the evidence is disclosed or the averment is made. When, therefore, the record states the evidence or makes an averment with reference to a jurisdictional fact, it will be understood to speak the truth on that point, and it will not be presumed that there was other or different evidence respecting the fact, or that the fact was otherwise than as averred." In the same case: "It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, *and has been afforded an opportunity to be heard.* Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

The question of the jurisdiction of the Pennsylvania court being then open, on this record, let us see what presumptions arise from the showing made by it.

The complaint in this case, as we have seen, alleged that on the 3d day of December 1897—the date of the insurance certificate—as well as prior and subsequent thereto, the defendant association engaged in business in Pennsylvania, soliciting applications for insurance and issuing policies to residents of that Commonwealth. The answer denied each and every material allegation in the complaint, and such a denial under the Indiana Code of Civil Procedure was sufficient to put the plaintiffs upon proof of every fact that was essential in establishing their cause of action. *Thornton's Indiana Code, Art.* 10, *Sec.* 47, *Title Pleadings; R. S. U. S.* § 914.

The burden of proof was therefore upon the plaintiffs to show by what authority the Pennsylvania court could legally enter a personal judgment against a corporation which, according to the complaint itself, was a corporation of another State and was not alleged to have appeared in person or by an attorney of its own selection or to have been personally served with process. This burden the plaintiffs met by introducing in evidence a complete transcript of the record of the action in the Pennsylvania court from which it appeared: 1. That the defendant association was sued in the Pennsylvania court as a life insurance association of Indiana, was alleged to have been engaged in business in Pennsylvania, and was so engaged before and after the certificate of insurance in question was issued. 2. That the summons in that action was served on the Commissioner of Insurance for Pennsylvania, the defendant association not having appointed an agent in that Commonwealth upon whom process could be served nor having appeared by an attorney or representative. 3. That the Insurance Commissioner not having appeared in the action, judgment was taken against the defendant; and that is the judgment here in suit.

It was further made to appear in the present action that when the contract of insurance was executed, as well as before and since, it was provided

June 20th, 1883

by a statute of Pennsylvania, approved ~~April 4th 1870~~, amendatory of a previous statute of that Commonwealth establishing an Insurance Department, as follows: "No insurance company not of this State, nor its agents, shall do business *in this State* until it has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally on the company within this State, and if such company should cease to maintain such agent in this State so designated such process may thereafter be served on the Insurance Commissioner; but so long as any liability of the stipulating company to any resident of this State continues such stipulation cannot be revoked or modified, except that a new one may be substituted, so as to require or dispense with the service at the office of the said company within this State, and that such service of process according to this stipulation shall be sufficient personal service on the company. The term process shall be construed to mean and include any and every writ, rule, order, notice or decree, including any process of execution that may issue in or upon any action, suit or legal proceeding to which said company may be a party by themselves, or jointly with others, whether the same shall arise upon a policy of insurance or otherwise, by or in any other court of this Commonwealth having jurisdiction of the subject matter in controversy, . . and in default of an agent appointed by the company as aforesaid then the officer so charged with the service of said process shall in like manner deputize the sheriff, constable or other officer aforesaid of the county where the agent, if any there be, named by the Insurance Commissioner may reside, to serve the same on him, and in default of such agent named by such commissioner, as aforesaid, then in like manner to deputize the sheriff, constable or other officer as aforesaid of the county where the office of the Insurance Commissioner may be located to serve the same on him; and each and every service so made shall have the same force and effect, to all intents and purposes, as personal service on said company in the county where said process issued; . ."

The defendant association introduced no evidence. If looking alone at the pleadings in the Pennsylvania suit it be taken that at the time of the contract in question the Indiana corporation was engaged in transacting, at least, *some* business in Pennsylvania, without having complied with the provisions of the above statute of that Commonwealth—that is, without having filed with the Insurance Commissioner the written stipulation required by that statute—still, plaintiffs can not claim, on the present record, the full benefit of the general rule that the judgment of a court

of superior authority, when proceeding within the general scope of its powers, is presumed to act rightly within its jurisdiction; that nothing shall be "intended to be out of the jurisdiction of a superior court but that which specially appears to be so." *Peacock* v. *Bell*, 1 *Saunders*, 74. When a judgment of a court of superior authority is attacked collaterally for the want of jurisdiction, such a presumption cannot be indulged when it affirmatively appears from the pleadings or evidence that jurisdiction was wanting. We make this observation in view of the fact, distinctly shown by the plaintiffs themselves, that the policy of insurance and contract in question was, in fact, executed in Indiana and not in Pennsylvania. The policy sued on provided as one of its conditions that "for all purposes and in all cases this contract shall be deemed to have been made at the special office of this association in the State of Indiana, U. S. A., and all benefits and claims thereunder shall be payable at such office." Besides, to the complaint or petition in the Pennsylvania court was appended the following memorandum signed by the attorney for the plaintiffs: "The above contract of insurance is governed by the laws of the State of Indiana, the contract having been entered into at Indianapolis." And when the suit was brought in Pennsylvania the plaintiffs were confronted with the condition in the policy that "it is expressly understood and agreed that no action shall be maintained nor recovery had for any claims under or in virtue of this policy, after the lapse of six months from the death of said member," McNally. More than six months had elapsed after McNally's death before the suit was instituted in Pennsylvania. In order to obviate this difficulty the plaintiffs in their declaration or statement in assumpsit, in the Pennsylvania court, alleged that the contract of insurance was governed by the laws of Indiana, "the contract having been entered into at Indianapolis, Indiana"; also, that "said policy of insurance and the contract touching the issuing the same were executed in the State of Indiana, in which State all provisions limiting liability on policies where suit is not brought within a certain time are held void and of no account." The plaintiffs cannot, therefore, be heard now to say that the contract was not, in fact, made in Indiana. What they alleged in the Pennsylvania suit precluded the idea that the contract of insurance was made in that Commonwealth. Indeed, if they had alleged that the business was transacted in Pennsylvania their action on the contract would have been defeated by the condition in the policy that no suit thereon could be brought on it after the expiration of six months from the death of the person whose life was insured.

But even if it be assumed that the insurance company was engaged in *some* business in Pennsylvania at the time the contract in question was made, it cannot be held that the company agreed that service of process upon the

Insurance Commissioner of that Commonwealth would alone be sufficient to bring it into court in respect of *all* business transacted by it, no matter where, with or for the benefit of citizens of Pennsylvania. Undoubtedly, it was competent for Pennsylvania to declare that no insurance corporation should transact business within its limits without filing the written stipulation specified in its statute. *Lafayette Ins. Co.* v. *French*, 18 *How.* 404; *Paul* v. *Virginia*, 8 *Wall.* 168; *Hooper* v. *California*, 155 *U. S.* 648, 653, *and authorities cited; Waters-Pierce Oil Co.* v. *Texas*, 177 *U. S.* 28, 45. It is equally true that if an insurance corporation of another State transacts business in Pennsylvania without complying with its provisions it will be deemed to have assented to any valid terms prescribed by that Commonwealth as a condition of its right to do business there; and it will be estopped to say that it had not done what it should have done in order that it might lawfully enter that Commonwealth and there exert its corporate powers. In *Railroad Company* v. *Harris*, 12 *Wall.* 65, the question was as to the jurisdiction of the Supreme Court of the District of Columbia of a suit against a corporation in Maryland, whose railroad entered the District with the consent of Congress. This court said: "It (the corporation) cannot migrate, but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented and will be bound accordingly." This language was cited and approved in *Railway Company* v. *Whitton*, 13 *Wall.* 270, 285. The same question was before the court in *Ex parte Schollenberger*, 96 *U. S.* 369, 376, and the principle announced in the *Harris* and *Whitton* cases was approved. In the *Schollenberger* case the Pennsylvania statute here in question was involved. To the same effect are the following cases: *Ehrman* v. *Teutonia Ins. Co.*, 1 *McCrary*, 123, 129; *Knapp, Scott & Co.* v. *Nat. Mut. Fire Ins. Co.*, 30 *Fed. Rep.* 607; *Berry* v. *Knights Templars' & Masons' Life Indemnity Co.*, 46 *Fed. Rep.* 439, 441–2; *Diamond Plate Glass Co.* v. *Minneapolis Mut. Fire Ins. Co.*, 55 *Fed. Rep.* 27; *Stewart* v. *Harmon*, 98 *Fed. Rep.* 190, 192.

Conceding then that by going into Pennsylvania, without first complying with its statute, the defendant association may be held to have assented to the service upon the Insurance Commissioner of process in a suit brought against it there in respect of business transacted by it in that Commonwealth, such assent can not properly be implied where it affirmatively appears, as it does here, that the business was not transacted in Pennsylvania. Indeed, the Pennsylvania statute, upon its face, is only directed against insurance companies who do business in that Commonwealth—"in this State." While the highest considerations of public policy demand that an insurance corporation, entering a State in defiance of a statute which lawfully pre-

scribes the terms upon which it may exert its powers there, should be held to have assented to such terms as to business there transacted by it, it would be going very far to imply, and we do not imply, such assent as to business transacted in another State, although citizens of the former State may be interested in such business.

As the suit in the Pennsylvania court was upon a contract executed in Indiana; as the personal judgment in that court against the Indiana corporation was only upon notice to the Insurance Commissioner, without any legal notice to the defendant association and without its having appeared in person, or by attorney or by agent in the suit; and as the act of the Pennsylvania court in rendering the judgment must be deemed that of the State within the meaning of the Fourteenth Amendment,* we hold that the judgment in Pennsylvania was not entitled to the faith and credit which by the Constitution is required to be given to the public acts, records and judicial proceedings of the several States, and was void as wanting in due process of law.

The judgment of the Supreme Court of Indiana must, therefore, be reversed, with directions for further proceedings not inconsistent with this opinion.

It is so ordered.

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* *Ex parte Virginia*, 100 *U. S.* 339, 346–7; *Neal* v. *Delaware*, 103 *U. S.* 370; *Yick Wo.* v. *Hopkins*, 118 *U. S.* 356; *Gibson* v. *Mississippi*, 162 *U. S.* 565; *Chicago, Burlington &c. R. R.* v. *Chicago*, 166 *U. S.* 226, 233–4.

True copy.

Test:

Clerk Supreme Court, U. S.